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**INDIAN  
CRIMINAL LAW AND PROCEDURE**



1038P.

India. Laws, statutes, etc. Codes, Criminal  
INDIAN &c

# CRIMINAL LAW AND PROCEDURE.

INCLUDING THE PROCEDURE IN THE HIGH COURTS, AS WELL  
AS THAT IN THE COURTS NOT ESTABLISHED  
BY ROYAL CHARTER:

WITH

FORMS OF CHARGES, AND NOTES ON EVIDENCE, ILLUSTRATED  
BY A LARGE NUMBER OF ENGLISH CASES, AND CASES  
DECIDED IN THE HIGH COURTS IN INDIA;

AND

## AN APPENDIX

OF SELECTED ACTS PASSED BY THE LEGISLATIVE COUNCIL,  
RELATING TO CRIMINAL MATTERS.

BY

M. H. STARLING, LL.B.,  
OF THE INNER TEMPLE, BARRISTER-AT-LAW.

THIRD EDITION,

BY

M. H. STARLING

AND

F. C. CONSTABLE, M.A.,  
OF LINCOLN'S INN, BARRISTER-AT-LAW.

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## PREFACE TO FIRST EDITION.

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THE want of such a book as the present was suggested by the difficulty I encountered in getting up the subject of Indian Criminal Law and Procedure from the various Acts scattered through the statute-book of the Legislative Council of India, and the English statute-book; for although several writers have commented on the Penal Code, and a few on the Criminal Procedure Code, no one has hitherto combined the Penal Code with the course of Procedure in the Courts, both those established and those not established by Royal Charter. Therefore, while collecting the requisite information for my own use, I arranged the materials in a form well known to all acquainted with English criminal law—viz., that of ‘Archbold’s Pleading and Evidence in Criminal Cases.’ The sections of the Penal Code have been grouped so as to bring into juxtaposition those which relate to the same class of offences. To each group has been appended a short paragraph containing information collected from the schedule to the Criminal Procedure Code, as amended by Acts xxxiii. of 1861 and viii. of 1866, respecting the Courts competent to try offenders; the power of the police to arrest with or without a warrant; the issue of a summons or warrant in

the first instance by the Magistrate ; and as to whether offenders are or are not bailable. Where such has been necessary, reference has been made to the provisions of the Whipping Act of 1864 under each group of sections, and notice has also been taken wherever the Criminal Procedure Code requires that any authorization should be obtained for the commencement of prosecutions. Reference has also been made to the statutory requirements in charges, and any other speciality provided for by the Procedure Code or either of the High Court Procedure Acts.

Belonging to and following nearly all the groups of sections, will be found one or more forms of charges, which are intended as models from which any other similar ones may be framed. In drawing these, I have availed myself, where practicable, of the assistance of Mr Mayne's 'Commentaries on the Penal Code,' Mr Prinsep's book on the 'Criminal Procedure Code,' and other works published in India ; also of any decisions of the High Courts in respect to the proper wording of charges ; and while seeking to carry out the spirit of the Penal and Procedure Codes, in making them as wide and as free from technicality as possible, I have at the same time endeavoured not to lose sight of the particularity of an indictment, and the care which is always shown therein to inform the accused of the precise charge made against him.

The portion devoted to the evidence necessary to support each charge, consists, in some cases, of a careful digest and condensation, and, in others, of a considerable enlargement, of so much of the corresponding portion of Archbold's work as was fitted to illustrate and explain the wording of the Code, interwoven with the cases decided by the High Courts in India. Where Archbold has not treated of any

## PREFACE TO FIRST EDITION.

particular subject, the English law given in the present work has been drawn from the leading cases on the subject.

In the book on Punishments, the Sections of the Penal Code and those of the Criminal Procedure Code have been arranged so that all the Sections of both Codes relating to the same subject will be found together. The notes contain the decisions of the Indian Courts on those Sections which have been made the subject of judicial notice.

In that portion which treats of Procedure, the text of the Code of 1861, as amended by Act xv. of 1862, has been rigidly adhered to, and the decisions of the High Courts on the various Sections will be found in footnotes. In this part of the work, it has been thought advisable to put the decisions in notes instead of incorporating them into the text, as this latter course would break the thread of the Act, and tend to render it difficult to catch at a glance the whole of the procedure relating to any one subject. Partly in separate Chapters, and partly side by side with the Sections of the Code, have been arranged the Sections of the two High Court Procedure Acts, and those portions of English Statutes which are incorporated therewith. Where the Sections of the High Court Acts are placed side by side with those of the Procedure Code, the former are distinguished by having the letters H.C. prefixed to them.

In the book on General Explanations, all the definitions from the Acts referred to in this book have been collected, and where the same definition occurs in more than one Act, reference has been made to each.

With respect to cases quoted from the Indian Reports, I am responsible for the accuracy of the reference to all those in which the name of the case is given, except a few which, at the last moment, I extracted from Mr Prinsep's 'Proced-



ure Code,' and also for all those reported in the 'Madras Jurist;' the others I have obtained from the last (1867) edition of Mr Mayne's 'Commentaries on the Penal Code,' as I was unable in those cases to obtain the original reports.

The type of this work has been arranged so that the distinction between the various items of information may at once catch the eye, and with that view the number and year of the Acts and the number of the Sections have been printed in black type, while the summary of the contents of each Section, and the paragraph of information respecting the place of trial, &c., have been put into italics. With a view also of rendering the book as useful as possible to the practitioner, as well as to the student, the margin has been made available for the addition of manuscript notes of the cases decided from time to time, by reducing the width of the inside margin and proportionately increasing that of the outside, so that when notes are inserted, allowance may be made for the cutting necessary in binding, and all risk of the annoyance of having half the notes pared off avoided; and to make the contents as accessible as possible, tables of the Acts referred to and the cases quoted, have been prefixed to the book, while at the end will be found a copious Index.

This work was in the press when a new Criminal Procedure Code was introduced into the Legislative Council in Calcutta in April last, and in the expectation that it would soon become law, the paragraphs respecting the place of trial, &c., at the end of the groups of Sections of the Penal Code, were altered according to the Schedule attached to the New Act, and to save time, were so sent to press. The New Code having been a long while on hand,

## PREFACE TO FIRST EDITION.

and no information as to the probable time of its passing being obtainable, it was thought desirable to issue this work at once, and the paragraphs referred to were made conformable to the present state of the law as found in the Old Procedure Code of 1861 and the amending Acts, by the errata which will be found at the commencement of the work. Readers are therefore particularly requested to make all the alterations there enumerated before using the work as a book of practice. Shortly after this determination was formed, the Editor received a communication from the India Office thanking him for a number of suggestions he had made in respect to the provisions of the proposed New Criminal Procedure Code when it was first introduced into the Council, and stating that the whole matter had been referred to Her Majesty's Indian Law Commissioners, who had reported that no further legislation on that subject was desirable at present; it is, therefore, to be presumed that the proposed new bill has been withdrawn.

As this book is new in respect of its matter, although it is moulded on an old form, I trust that the indulgence of readers will be extended to any errors which may have inadvertently escaped notice; and at the same time I hope that, should they have any suggestions of alterations which would make it more useful, I may be favoured with them, in order to be able to improve upon the present edition at a future time.

In conclusion, I have to express my thanks to the Secretary of State for India, and the officials at the India Office, for their courtesy in permitting me ready access to books in the library of that Office which otherwise I could

PREFACE TO FIRST EDITION.

only have obtained with much trouble and expense. I have also to thank my friend Standish Grove Grady, Esq., of the Inner Temple, for the kind way in which he placed all his copies of Reports in the High Courts at my disposal; and my friend C. J. B. Hertslet, Esq., of the Middle Temple, for the continual great assistance I have derived in being able to discuss with him points in the wording of these Acts which have presented any difficulty, and to obtain the benefit of his opinion and advice thereon.

M. HENRY STARLING.

TEMPLE, *November 1868.*

## PREFACE TO SECOND EDITION.

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IN April 1868 a Bill was introduced into the Legislative Council in Calcutta for the purpose of entirely remodelling the Criminal Procedure Code. This Bill was very loosely and carelessly drawn, and was, in December last, altered by order of the Secretary of State for India to an amending Act, which was to deal with such matters only as were merely points of administrative detail. In this form the Act has since become law, under the title of "The Code of Criminal Procedure Amendment Act, 1869" (Act viii. of 1869), and came into operation on the 1st June last. A few useful changes are introduced by this Act, but in other respects the alterations are such as to change the wording of the Sections without making any substantial change in the law, and thus there has been an expenditure of a large amount of trouble and time without any corresponding benefit, and in some cases even it would appear as if the effort of the framer of the Bill had been to make as much change in the wording, and at the same time as little in the meaning, of a Section, as was possible. Such as it is, the Act is printed here in a form which it is hoped will enable it to be fixed in positions where the original Sections and the amendments may be seen at a glance, without the reader having constantly to turn to and fro to see whether a particular Section has or has not been altered.

M. H. S.

BOMBAY, 1st July 1869.

## PREFACE TO THIRD EDITION.

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THE passing of the Criminal Procedure Code (Act x. of 1872), which repeals Act xxv. of 1861 and the various amending Acts, since the appearance of the previous edition of this work in 1870, has made the preparation of a Third Edition a matter of imperative necessity. This circumstance is the less to be regretted, that it has afforded the Authors an opportunity of adding largely to the matter contained in the work, and also of making a variety of alterations in the arrangement, which, they trust, may be found to increase its practical utility. The body of the work now contains nearly 350 pages more than the former edition, being, in fact, considerably more than half as large again. Each subsidiary part has undergone a corresponding or still greater increase. Thus the Table of cited Cases now occupies 12 pages instead of 6, and the Index 53 pages instead of 30—clear indications of the large quantity of additional matter that has been introduced. It will be remembered that, in the former edition, the Acts were not printed in the order of the Sections, but the Sections were grouped according to subjects, and even the Acts were intermixed, so that the procedure adapted to each offence or class of offences might be found in juxtaposition with

the Sections of the Penal Code relating to such offence or offences. This mode of arrangement has been relinquished ; the Indian Penal Code and Criminal Procedure Code will now be found printed in separate parts of the work, and the Sections of each Code are printed, generally, in their regular numerical order. In the few instances in which, for some special reason, it has seemed expedient to change the order, references have always been given to the pages at which the missing Sections may be found. The Authors are induced to hope that this important change may be found to save a good deal of trouble in seeking for particular Sections, and that, if the former arrangement may appear more scientific, the method now adopted may render the book more useful for reference, and therefore more acceptable to the practical lawyer, for whose special use it is intended. The Notes are placed, as before, after the Sections to which they respectively belong, but, in order to effect a distinct demarkation, the word " Note," in larger type than the general body of the work, has always been printed at the beginning of each annotation or series of annotations. The plan of the Index has been altered considerably, with the view of making it more useful in consulting the work. In the former edition the Index consisted merely of a number of heads, printed alphabetically, with the subordinate entries printed continuously throughout any number of lines, and without any alphabetical arrangement. In the present edition the principal heads, in numerous instances, have several sub-heads, with groups of entries under them, and the whole, down to the most minute subordinate entries, are arranged in strictly alphabetical order, while each head, sub-head, or entry commences a new line of the letterpress. The Authors trust that the care which they have bestowed

## PREFACE TO THIRD EDITION.

on the body of the book, and, in a minor degree, the attention which has been given to practical details, may cause the present edition to be received with the same favour which has already been bestowed on their less matured efforts.

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In the absence of the Authors, the Publishers beg leave to tender their best thanks to Mr Almaric Rumsey, of Lincoln's Inn, Barrister-at-law, for his kindness in seeing the work through the press.

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**B O O K I.**

**THE INDIAN PENAL CODE**

**(ACT XLV. OF 1860)**





# INDIAN CRIMINAL LAW AND PROCEDURE.

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## PENAL CODE.

(ACT XLV. OF 1860.)

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### CHAPTER I.

#### EXTENT OF OPERATION OF PENAL CODE.

**Sect. 1.** *Title and Extent of Operation of Penal Code.*—This Act shall be called the Indian Penal Code, and shall take effect on and from the 1st day of May 1861 throughout the whole of the territories which are or may become vested in her Majesty by the statute 21 & 22 Vict. c. 106, entitled, “An Act for the better Government of India,” except the Settlement of Prince of Wales Island, Singapore, and Malacca.

**Note.**—This Act is now extended to the above-mentioned Settlement by Act v. of 1867. Every part of the Code where the 1st day of May appears is to be construed as if the words “1st day of January” 1862 had been used instead. Act vi. of 1861.

**Sect. 2.** *Infringement of Provisions of Code.*—Every person shall be liable to punishment under this Code, and not otherwise, for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories, on and after the said 1st day of May 1861.

**Note.**—The locality of the said territories extends to three miles from their shore; so an offence committed at sea within three miles

of such shore will come under this section.—Reg. v. Irvine, 1st Mad. Sessions, 1867; Reg. v. Elmstone, 7 Bom. H.C.R.C.C. 104; Reg. v. Kastya Rama, 8 Bom. H.C.R.C.C. 67; Rolet v. Reg., 1 L.R.P.C. Cases, 198. But this jurisdiction under the Code over such part of the sea does not oust the Admiralty jurisdiction.—Reg. v. Elmstone, 7 Bom. H.C.R.C.C. 104; Reg. v. Pauline, 9 Jur. 286. The limit of three miles appears to have been fixed as being the limit of range of a cannon-shot fired to sea from low water—the rule being, *potestatem terræ finire ubi finitur armorum vis* (Bynkershoek, *De Dominio Maris*, cap. 2). It has been suggested by Mr Lawrence, in his edition of ‘Wheaton’s International Law’ (pp. 320 to 323, 1864), that in consequence of the distance a cannon-shot will reach having been increased in a remarkable degree by modern inventions, the sovereignty over the coast may, consequently, be deemed to have been proportionally extended. The question, however, has not as yet arisen for argument.

**Sect. 3.** *Offences committed beyond the Limits of the said Territories.*—Any person liable, by any law passed by the Governor-General of India in Council, to be tried for an offence committed beyond the limits of the said territories, shall be dealt with according to the provisions of this Code for any act committed beyond the said territories, in the same manner as if such act had been committed within the said territories.

**Note.**—*Foreign Jurisdiction.*—By the “Foreign Jurisdiction and Extradition Act,” xi. of 1872, Sect. 4:—The Governor-General in Council may exercise any power or jurisdiction which the Governor-General in Council now has or may at any time hereafter have, within any country or place beyond the limits of British India, and may delegate the same to any servant of the British Indian Government in such manner and to such extent as to the Governor-General in Council from time to time seems fit.

By Sect. 8:—The law relating to Offences and to Criminal Procedure for the time being in force in British India shall, subject as to procedure to such modifications as the Governor-General in Council from time to time directs, extend to all British subjects, European and native, in native States.

By Sect. 9:—All British subjects, European and native, in British India may be dealt with, in respect of offences committed by them, in any native State, as if such offences had been com-

mitted in any place within British India in which any such subject may be or may be found.

"Native States," by the same Act, are defined to mean:—In reference to native Indian subjects of her Majesty, all places without and beyond the Indian territories under the dominion of her Majesty. In reference to European British subjects, the dominions of Princes and States in India in alliance with her Majesty.

To the same Section 9 the following provisions are added:—Provided that no charge as to any such offence shall be inquired into in British India, unless the political agent, if there be such, for the territory in which the offence is said to have been committed, certifies that in his opinion the charge is one which ought to be inquired into in British India.

Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence, if such offence had been committed in British India, shall be a bar against further proceedings against him under this Act in respect of the same offence in any native State.

The above-mentioned Act repealed so much of Act i. of 1849 (Sect. 1 was repealed by Act xiv. of 1870) as had not been already repealed. Act i. of 1849 provided that:—All subjects of the British Government, and also all persons in the civil or military service of the said Government, while actually in such service, and for six months afterwards, and also all persons who shall have dwelt for six months within the British territories, under the Government of the East India Company, subject to the laws of the said territories, who shall be apprehended within the said territories, or delivered into the custody of a magistrate within the said territories, shall be amenable to law for all offences committed by them within the territories of any foreign Prince or State; and may be bailed or committed for trial, on the like evidence as would warrant their being held to bail or committed for the same offence, if it had been committed within the British territories.

In connection with the repeal of Act i. of 1849 it is to be noticed that the jurisdiction it gave for offences committed within the territories of foreign Princes and States over foreigners who have dwelt for six months within British territory, no longer exists, Act xi. of

1872 being silent on the subject. For acts done by foreigners in India there is jurisdiction under the ordinary municipal law. As to persons in the service of the British Government, Sect. 4 of the Penal Code provides for their punishment on offences committed within a foreign allied State. Mr Mayne observes, in his 'Commentaries on the Penal Code,' that Act. i. of 1849 refers "to offences committed 'within the territories of any foreign Prince or State.' Therefore, if a murder were committed by a British subject in Pekin, he would be triable for it in Madras; but not if the same crime were committed by the same person in Hong Kong. He could only be proceeded against under the provisions of Act vii. of 1854." With reference to the above, it is to be noticed that the existing Act xi. of 1872 refers only to "native States" as therein defined, and not to the "territories of any foreign Prince or State." At the present time, therefore, a crime committed in Pekin would be dealt with exactly as one committed in Hong Kong. Act vii. of 1854, which treated of the extradition of criminals, has been repealed by the above-mentioned Act xi. of 1872, and other provisions for extradition substituted, as will be hereafter shown.—See Appendix. 26 Geo. III. c. 57, s. 29, and 33 Geo. III. c. 52, s. 67, which conferred jurisdiction over offences committed out of British India, are also repealed by Act xi. of 1872.

The charters of the late Supreme Courts of Madras and Bombay (Sects. 34, 44, 2 Mor. Dig. 16. 667), gave those courts jurisdiction over all offences "committed by any of our subjects in any of the territories subject to or dependent upon the Government of Madras or Bombay, or within any of the territories which now are or hereafter may be subject to or dependent upon the said Government, or within any of the dominions of the native Princes of India in alliance with the said Government." This jurisdiction is continued to the High Courts by Sect. 21 of the Letters Patent of 1862; and again by Sect. 22 of the Letters Patent of 1865. No such clause exists in the Calcutta charter. By order of the Governor-General in Council ('Fort St George Gazette,' February 1867, p. 192), made in accordance with 28 & 29 Vict. c. 15, s. 3, the High Court of Madras is to exercise original criminal jurisdiction over European British subjects, being Christians, resident in the native States of Mysore, Travancore, Cochin, Poodoocottah, Bunganaputty, and Soondoor.

*Extradition.*—By Sect. 11 of Act xi. of 1872 it is provided as to extradition that :—When an offence has been committed, or is supposed to have been committed, in any State against the law of such State by a person not being a European British subject, and such person escapes into, or is in British India, the political agent for such State may issue a warrant for his arrest and delivery at a place in such State, and to a person to be named in the warrant— if such political agent thinks that the offence is one which ought to be inquired into in such State,—and if the Act said to have been done would, if done in British India, have constituted an offence against any of the sections of the Indian Penal Code mentioned in the 2d schedule hereto or under any other section of the said Code; or any other law which may from time to time be specified by the Governor-General in Council by a notification in the Gazette.

The sections of the Penal Code mentioned in the 2d schedule are :—230 to 263, 299 to 304, 307, 310, 311, 312 to 317, 323 to 333, 347, 348, 360 to 373, 375 to 414, 435 to 440, 443 to 446, 464 to 468, 471 to 477.

See also on the subject of extradition, the treaties between England and France of March 1815 and February 1843, confirmed by Act 6 & 7 Vict. c. 75 ; and treaty with America, 1842, confirmed by 6 & 7 Vict. c. 76.

*Offences on the High Seas.*—The question whether the Indian Legislature has power to legislate with reference to offences committed on the high seas was considered at great length in the case of *Reg. v. Elmstone* (7 Bom. H.C.C.C. 89) by Westropp, C. J.

The legislative authority of the Governor in Council was created by Act 3 & 4 Will. IV. c. 85 ; Sect. 43 of which is to the following effect :—“ The said Governor in Council shall have power to make laws and regulations for repealing, amending, or altering any laws or regulations whatever now in force, or hereafter to be in force, in the said territories, or any part thereof, and to make laws and regulations for all persons, whether British or native, foreigners, or others, and for all courts of justice, whether established by his Majesty’s charters or otherwise, and the jurisdictions thereof, and for all places and things whatsoever within and throughout the whole and every part of the said territories, and for all servants of the said Company within the dominions of Princes and States in

alliance with the said Company; save and except that the said Governor-General in Council shall not have the power of making any laws or regulations which shall in any way repeal, vary, suspend, or affect any of the provisions of this Act, or any of the provisions of the Acts for punishing mutiny and desertion of officers and soldiers, whether in the service of his Majesty or the said Company, or any provisions of any Act hereafter to be passed in any wise affecting the said Company or the said territories or the inhabitants thereof, or any laws or regulations which shall in any way affect any prerogative of the Crown or the authority of Parliament, or the constitution or rights of the said Company, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or the sovereignty or dominion of the said Crown over any part of the said territories."

By Act 24 & 25 Vict. c. 67 (The Indian Councils Act), s. 22, the Governor-General in Council, as by the statute constituted, was enabled to make laws and regulations for "all persons, whether British or native, foreigners, or others, and for all courts of justice whatever, and for all places and things whatever within the said territories (of India), and for all servants of the Government of India within the dominions of Princes and States in alliance with her Majesty." With the proviso, however, that this Indian Legislature should not have the power of legislating so as to repeal, or in any way affect, certain imperial statutes therein named, "or any provisions of any Act passed in this present session of Parliament (1861), or hereafter to be passed, in any wise affecting her Majesty's Indian territories, or the inhabitants thereof, or which may affect the authority of Parliament."

The special power in the above Acts to legislate for all servants of the Government within the dominions of Princes and States in alliance with the Company or her Majesty was extended, by Act 28 & 29 Vict. c. 17, to "all British subjects of her Majesty within the dominions of Princes or States in India in alliance with her Majesty, whether in the service of the Government of India or otherwise."

By Act 32 & 33 Vict. c. 98, the Governor-General in Council was empowered to make laws and regulations for all native Indian subjects of her Majesty, her heirs and successors, without and

beyond, as well as within the Indian territories under the dominion of her Majesty; and by Sect. 2 of the same Act it was provided that "no law heretofore passed by the Governor-General of India, or by the Governors of Madras and Bombay respectively in Council, shall be deemed to be invalid solely by reason of its having reference to native subjects of her Majesty not within the Indian territories under the dominion of her Majesty." This last Act was passed on account of a doubt raised by the law officers of the Crown whether Act i. of 1849 was valid, the Act giving jurisdiction over *all* British subjects in foreign States, and the law officers of the Crown being of opinion, in 1866, that in the case of offences committed in foreign States by native Indian subjects of the Crown, the Governor-General in Council had not the power to make laws for their apprehension and punishment in British India, his power being restricted by statute 24 & 25 Vict. c. 67, s. 22; and 28 & 29 Vict. c. 17. Forsyth's Collection of Cases and Opinions on Constitutional Law, p. 24.

In *Reg. v. Alu Paru* (Perry's Or. Ca., 551), Sir Erskine Perry, referring to sect. 43 of 3 & 4 Will. 4 c. 85, and to the words in it "within and throughout the whole and every part of the said territories," said:—"It is contended that these latter words apply to the persons who are to be legislated for, as well as to the places and things with which they are immediately collocated. But the express distinction, which is made in the Act, between persons and things, lies deeply seated, I apprehend, in the principles of legislation, and corresponds with the distinction well known to jurists between personal and real statutes." And in this case Sir Erskine Perry expressed it as his opinion that 3 & 4 Will. 4 c. 85 had conferred power on the Indian Legislature to legislate for the high seas. With the reasons assigned in support of this opinion, the court, in the case of *Reg. v. Elmstone* (cited above), expressed itself dissatisfied. In this case Sir Michael Westropp in delivering judgment said (p. 107): "The power given both in that statute (24 & 25 Vict. c. 67, s. 22) and in the earlier statute (3 & 4 Will. 4 c. 85, s. 43), to legislate, not only for all persons British and native, but also for foreigners, perhaps furnishes an argument in favour of the construction which applies the words 'within and throughout the whole and every part of the said territories' in the one statute, and 'within the said territories' in the other, as well to 'persons'



as to 'places and things,' as it is scarcely to be supposed that a general power to legislate for foreigners beyond those territories was intended; and if the word 'foreigners' be limited to persons within the territories, so must the words 'all persons British or native.' It may be said that the intention was to give power to legislate for foreigners beyond the territories so far as international law would permit—*e.g.*, for foreigners on board British registered or Anglo-Indian registered ships. It is, however, difficult to understand why the Imperial Legislature should delegate to the Indian Legislature, or to any other provincial legislature, the power to legislate *generally*, either for British subjects or foreigners in British registered ships on the high seas. Were it to do so, British subjects and foreigners in British ships might be subjected to conflicting laws in respect of their conduct on the high seas. Yet if the construction of the statute 3 & 4 Will. 4 c. 85, s. 43, which Sir E. Perry put forward in *Reg. v. Alu Paru*, be correct, it would seem to involve such a power. It is not improbable that had the Imperial Legislature intended to confer any power upon the Indian Legislature to legislate for the high seas beyond the maritime territory of British India, that power would have been limited to natives of India or persons domiciled in India, and perhaps to British subjects and foreigners in ships belonging to or registered in India. No such distinction is taken in the statutes. Nothing whatever is said as to the high seas, but words are introduced which, consistently with good grammar and the probable intention of Parliament, may be applied so as to limit the general power of legislation to the territory constituting British India. . . . The power to legislate for all servants of the Company in one statute, and for all servants of the Government of India in the other statute, respectively within the dominions of Princes and States in alliance with the Company or her Majesty, is special and exceptional, and furnishes a very strong reason for supposing that the previous general power of legislation conferred by the same statutes is limited to the territories of British India." And West J. in *Reg. v. Kastya Rama*, 8 Bom. H.C.R.C.C. 63, said:—"It seems impossible to maintain that a general power of legislation for the high seas, where a subordinate Government can neither enforce obedience nor afford protection, is implied in the delegation to it of authority to make laws for the territory placed under it."

Thus it would appear, for the reasons set forth above, that the Indian Legislature has had no power conferred on it to legislate for the high seas. The only Act by which the Government of India can be said to have attempted to legislate for offences committed on the high seas is Act xxxi. of 1838. But as this Act has been, so far as it affects offences on the high seas, repealed by Act viii. of 1868, no question arises now on its interpretation.

*Admiralty Jurisdiction of the High Courts.*—The present High Courts of Calcutta, Madras, and Bombay have the same Admiralty jurisdiction as that of the late Supreme Courts (see Charters, 1862, 1865, s. 32, 33). The jurisdiction of the late Supreme Courts was that of the High Court of Admiralty in England as it stood on the 8th Dec. 1823, the date of the letters patent creating the Supreme Courts. The jurisdiction of the Supreme Courts in Vice-Admiralty was created by commission from the High Court of Admiralty in England in 1843. The jurisdiction thus given in Vice-Admiralty was the jurisdiction possessed by the English High Court of Admiralty before the passing of statute 3 & 4 Vict. c. 65, which enlarged the Admiralty jurisdiction of the English High Court of Admiralty. See *Bardot v. The Augusta*, 10 Bom. H.C.R. 116; *in re The Asia* 5 Bom. H.C.R. 68, 69, where it was held that the statutes 3 & 4 Vict. c. 65, and 24 Vict. c. 10, do not extend to India.

By Sect. 267 of the Merchant Shipping Act, 17 & 18 Vict. c. 104:—

*Offences committed by British Seamen at Foreign Ports to be within Admiralty Jurisdiction.*—"All offences against property or person committed in or at any place, either ashore or afloat, out of her Majesty's dominions, by any master, seaman, or apprentice, who, at the time when the offence is committed, is, or within three months previously has been, employed in any British ship, shall be deemed to be offences of the same nature respectively, and be liable to the same punishments respectively, and be inquired of, heard, tried, determined, and adjudged in the same manner and by the same courts, and in the same places, as if such offences had been committed within the jurisdiction of the Admiralty of England, and the costs and expenses of the prosecution of any such offence may be directed to be paid as in the case of costs and expenses of prosecutions for offences committed within the jurisdiction of the Admiralty of England."

By Sect. 268, "the following rules shall be observed with respect to offences committed on the high seas or abroad :"—

*Conveyance of Offenders and Witnesses to British Possessions.*—

"(1.) Whenever any complaint is made to any British consular officer of any of the offences mentioned in the last preceding section, or of any offence on the high seas having been committed by any master, seaman, or apprentice belonging to any British ship, such consular officer may inquire into the case upon oath, and may, if the case so requires, take any steps in his power for the purpose of placing the offender under necessary restraint, and of sending him as soon as practicable in safe custody to the United Kingdom, or to any British possession in which there is a court capable of taking cognisance of the offence, in any ship belonging to her Majesty, or to any of her subjects, to be there proceeded against, according to law :

"(2.) For the purpose aforesaid, such consular officer may order the master of any ship belonging to any subject of her Majesty bound to the United Kingdom, or to such British possession as aforesaid, to receive and afford a passage and subsistence during the voyage to any such offender as aforesaid, and to the witnesses, so that such master be not required to receive more than one offender for every 100 tons of his ship's registered tonnage, or more than one witness for every 50 tons of such tonnage ; and such consular officer shall indorse upon the agreement of the ship such particulars with respect to any offenders or witnesses sent in her as the Board of Trade requires :

"(3.) Every such master shall, on his ship's arrival in the United Kingdom, or in such British possession as aforesaid, give every offender so committed to his charge into the custody of some police officer or constable, who shall take the offender before a justice of the peace, or other magistrate by law empowered to deal with the matter, as in cases of offences committed upon the high seas." And the section in conclusion provides, "that every such master not complying when required with the above provisions, shall incur for each offence a penalty not exceeding £50 ; and that the expenses of imprisoning any offender under Sect. 267, and of conveying him and the witnesses to the United Kingdom, or to such British possession as aforesaid, in any manner other than in the ships to which they respectively belong, shall be part of the

costs of the prosecution, or be paid as costs on account of seafaring subjects of her Majesty left in distress in foreign parts" (see Sect. 211-213).

By Sect. 270:—

*When Witness cannot be produced.*—"Whenever, in the course of any legal proceedings instituted in any part of her Majesty's dominions, before any judge or magistrate, or before any person authorised by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject-matter of such proceeding, then upon due proof, if such proceeding is instituted in the United Kingdom, that such witness cannot be found in that kingdom, or if in any British possession, that he cannot be found in the same possession, any deposition that such witness may have previously made on oath in relation to the same subject-matter before any justice or magistrate in her Majesty's dominions, or any British consular officer elsewhere, shall be admissible in evidence, subject to the following restrictions (that is to say):—

"(1.) If such deposition was made in the United Kingdom, it shall not be admissible in any proceeding instituted in the United Kingdom:

"(2.) If such a deposition was made in any British possession, it shall not be admissible in any proceeding instituted in the same British possession:

"(3.) If the proceeding is criminal, it shall not be admissible unless it was made in the presence of the person accused:

"Every deposition so made as aforesaid shall be authenticated by the signature of the judge, magistrate, or consular officer before whom the same is made; and such judge, magistrate, or consular officer shall, when the same is taken in a criminal matter, certify, if the fact is so, and that the accused was present at the taking thereof, but it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition; and in any criminal proceeding, such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified; but nothing herein contained shall affect any case in which depositions taken in any proceeding are rendered admissible by any Act of Parliament, or by any act or ordinance of the legislature of any colony, so far as regards such colony, or to interfere with the power

of any colonial legislature to make such depositions admissible in evidence, or to interfere with the practice of any court in which depositions not authenticated as hereinbefore mentioned are admissible."

By Sect. 2 of the same Act, "her Majesty's dominions" are defined as "her Majesty's dominions strictly so called, and all territories under the government of the East India Company, and all other territories (if any) governed by any charter or licence from the Crown or Parliament of the United Kingdom." "British possessions" are defined as "any colony, plantation, island, territory, or settlement within her Majesty's dominions, and not within the United Kingdom."

The foregoing sections regulate the procedure before the various authorities mentioned therein, and to the provisions contained therein must they conform their practice. Sect. 270 has been specifically adopted in India by Sect. 111 of Act i. of 1859, which is to the following effect :—

"Whenever, in the course of any legal proceedings instituted at any port or place in India before any judge or magistrate, or before any person authorised by law, or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject-matter of such proceeding, any deposition that such witness may have previously made in relation to the same subject-matter before any justice or magistrate in her Majesty's dominions (including all parts of India other than those subject to the same local government as the port or place where such proceedings are instituted), or any British consular officer elsewhere, shall, if authenticated by the signature of the justice, magistrate, or consular officer, be admissible in evidence on due proof that such witness cannot be found within the jurisdiction of the court in which such proceedings are instituted. Provided that, if the proceeding is criminal, such deposition shall not be admissible, unless it was made in the presence of the person accused, and the fact that it was so made is certified by the justice, magistrate, or consular officer. It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition ; and in any criminal proceeding such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified." (This section applies

only to the depositions of merchant seamen. *Reg. v. Ramcomul Mitter*, 1 Bengal H.C. Rep. 195.)

Sect. 267 of the above statute applies only to masters, seamen, and apprentices, but by Act 18 & 19 Vict. c. 91 (which, by Sect. 1, was directed to be taken as part of the above Act, and construed accordingly), s. 21, it is provided that:—"If any person, being a British subject, charged with having committed any crime or offence on board any British ship on the high seas, or in any foreign port or harbour, or if any person, not being a British subject, charged with having committed any crime or offence on board any British ship on the high seas, is found within the jurisdiction of any court of justice in her Majesty's dominions, which would have had cognisance of such crime or offence if committed within the limits of its ordinary jurisdiction, such court shall have jurisdiction to hear and try the case, as if such crime or offence had been committed within such limits: Provided that nothing contained in this section shall be construed to alter or interfere with the Act 12 & 13 Vict. c. 96" (see *infra*).

By Act 30 & 31 Vict. c. 124 (which, by Sect. 1, is to be construed with and as part of 17 & 18 Vict. c. 104), a further advance was made. Sect. 11 provides that:—"If any British subject commits any crime or offence on board any British ship, or on board any foreign ship to which he does not belong, any court of justice in her Majesty's dominions which would have had cognisance of such crime or offence, if committed on board a British ship within the limits of the ordinary jurisdiction of such court, shall have jurisdiction to hear and determine the case as if the said crime or offence had been committed as last aforesaid."

*Extension of Admiralty Jurisdiction to the Mofussil Courts.*—We have referred as yet only to the Admiralty jurisdiction of the High Courts; and till the passing of the statute 23 & 24 Vict. c. 88, the Mofussil Courts had no such jurisdiction. But by 23 & 24 Vict. c. 88, s. 1, the provisions of 12 & 13 Vict. c. 96 were extended to India. Sect. 1 of this Act, as applied to India, provides that:—"If any person in" British India "shall be charged with the commission of any treason, piracy, felony, robbery, murder, conspiracy, or other offence of what nature soever, committed upon the sea, or in any haven, river, creek, or place, where the admiral or admirals have power, authority, or jurisdiction, or if any person charged with

the commission of any such offence upon the sea, or in any such haven, river, creek, or place, shall be brought for trial to" British India, "then, and in every such case, all magistrates, justices of the peace, public prosecutors, juries, judges, courts, public officers, and other persons in India shall have and exercise the same jurisdiction and authorities for inquiring of, trying, hearing, determining, and adjudging such offences, and they are hereby respectively authorised, empowered, and required to institute and carry on all such proceedings for the bringing of such person so charged as aforesaid to trial, and for and auxiliary to and consequent upon the trial of any such person for any such offence wherewith he may be charged as aforesaid, as by the law of" British India "would and ought to have been had and exercised or instituted and carried on by them respectively, if such offence had been committed, and such person had been charged with having committed the same upon any waters situate within the limits of" British India, "and within the limits of the local jurisdiction of the courts of criminal justice."

By Sect. 2 :—"Provided always that if any person shall be convicted before any such court of any such offence, such person so convicted shall be subject and liable to, and shall suffer all such and the same pains, penalties, and forfeitures as by any law or laws now in force persons convicted of the same respectively would be subject and liable to, in case such offence had been committed, and were inquired of, tried, heard, determined, and adjudged in England, any law, statute, or usage to the contrary notwithstanding."

Sect. 3 provides that :—"Where any person shall die in" British India "of any stroke, poisoning, or hurt, such person having been feloniously stricken, poisoned, or hurt upon the sea, or in any haven, river, creek, or place where the admiral or admirals have power, authority, or jurisdiction, or at any place out of" British India, "every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory before the fact to murder, or after the fact, to murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished in" British India "in the same manner in all respects as if such offence had been wholly committed in" British India ; "and if any person in" British India "shall be charged with any such offence as aforesaid in respect of the death of any person who, having been feloniously stricken, poisoned, or otherwise hurt,

shall have died of such stroke, poisoning, or hurt upon the sea, or in any haven, river, creek, or place where the admiral or admirals have power, authority, or jurisdiction, such offence shall be held for the purpose of this Act to have been wholly committed upon the sea."

*What Law and Procedure applicable to Offences on the High Seas.*

—In the case of *Reg. v. Thompson*, 1 B.L.R. Cr. Rg. 1, decided in 1867 before the passing of the Act 30 & 31 Vict. c. 124, the prisoner was charged under 7 Will. 4 & 1 Vict. c. 85, s. 2, of a criminal offence on board a British ship upon the high seas and within the Admiralty jurisdiction of the Calcutta High Court, and was found guilty by a jury of an offence under statute 14 & 15 Vict. c. 19, s. 5. The Court held that the procedure adopted was properly the Indian procedure, but that the charge and conviction were properly founded on the English statutes, and that the punishment must be according to English law. Peacock, C. J., in this case, referring to statute 12 & 13 Vict. c. 96, said: "I can well understand that Parliament would prefer to make such person subject to the punishment imposed by English law, rather than that of the colony; they might not be certain what that law was, or, if aware of it, might not wish to extend it." In the case of *Reg. v. Elmstone*, 7 Bom. H.C.R.C.C. 89, it was held that the substantive law applicable to a British-born subject tried in the High Court at Bombay for destroying a British ship on the high seas, at a distance of more than three miles from the shores of British India, was the English law, and not the Indian Penal Code; and the procedure applicable, the ordinary criminal procedure of the High Court. In this case it was contended by counsel for the prisoner that the words "the Court shall have jurisdiction to hear *and determine* the case as if the offence had been committed within their local limits," in Act 30 & 31 Vict. c. 124, s. 11 (not in operation when *Reg. v. Thompson* was decided), had effect that the offence in question, committed on the high seas, must be tried and punished as if committed in India. But the Court, citing Sect. 267 of the Merchant Shipping Act, 17 & 18 Vict. c. 104; and Sect. 2 of the statute 12 & 13 Vict. c. 96, as showing conclusively that the law of punishment prescribed by those statutes is the law of England; and Sect. 1 of 30 & 31 Vict. c. 124, which provides that "this Act shall be construed with and as part of the Merchant Shipping Act,"—held that the words cited by counsel could not have the effect contended for by them. In all



criminal cases, then, tried in British India, whether in the Mofussil or High Courts, under their Admiralty jurisdiction, it would appear that the procedure applicable is the ordinary criminal procedure of the Court trying the case; but the law applicable, English law, not that of the Indian Penal Code, and the law so applicable would be English criminal law as existing in 1850 (12 & 13 Vict. c. 96, s. 2).—See Mayne's Commentary on the Indian Penal Code, p. 9.

As to the limits of Admiralty jurisdiction, especially as to the interval between high and low water mark, see *Reg. v. Elmstone*, 7 Bom. H.C.R. 105, and *Reg. v. Pauline*, 9 Jur. 286, S.C. 3, Notes of Cases 616, *Reg. v. Cunningham*, 28 L.J.N.S. Mag. Ca. 66, and 3 Haggard, Adm. Rep. 275, 283, therein referred to. Whether the Admiralty has jurisdiction "in harbours or below the bridges of great rivers near the sea, which are partly enclosed by the sea, will be in most cases a question of fact rather than law, and determinable by local evidence. It is plain, however, that the Admiralty can have no jurisdiction in any rivers, or arms or creeks of the sea, within the bodies of counties, though within the flux and reflux of the tide."—*East's Pleas of the Crown*.

*Piracy*.—Piracy, *jure gentium*, is justiciable everywhere. Piracy "is only a sea term for robbery—piracy being a robbery within the jurisdiction of the Admiralty. . . . If the mariners of any ship shall violently dispossess the master, and afterwards carry away the ship itself or any of the goods, with a felonious intention, in any place where the Lord Admiral hath jurisdiction, this is robbery and piracy."—*Rex. v. Dawson*, 13 State Trials, 454. And the same, of course, holds whether the dispossession be by mariners or passengers.—*Attorney-General of Hong-Kong v. Kwok-a-Sing*, 5 L.R.P.C., 200. In this last case it was shown that it is provided in the Hong-Kong Ordinance 2 of 1850, that where it may appear to a magistrate or court that there is probable cause for believing that a Chinese, who has taken refuge at Hong-Kong, has committed "any crime or offence against the laws of China," he may be imprisoned with a view to his being surrendered to the Government of China. On this it was held that in certain circumstances piracy would come within the ordinance; as, for example, if a Chinese went from the Chinese coast to plunder ships at sea, returning again to China with his plunder.

Where some of a large number of Chinese coolies who were being taken from China to Peru in a French ship, killed the captain and several of the French crew, and then took the ship back to China, they were held to have been guilty of piracy *jure gentium*. But the piracy was held not to be an offence against the law of China within the meaning of the ordinance. If they committed an act against the municipal law of any nation, it was against that of France; and if they were punishable by the law of China, it was only because they had committed an act of piracy, which, *jure gentium*, is justiciable everywhere.—Attorney-Gen. of Hong-Kong *v.* Kwok-a-Sing, 5 L.R.P.C. 200.

*Claim to be tried by High Court.*—By Sect. 2 of Act 23 & 24 Vict. c. 88, it is provided that: "Where any person within any place in India is charged with the commission of any offence, in respect of which jurisdiction is given by Act 12 & 13 Vict. c. 96; or where any person charged with the commission of any such offence is brought for trial under the said Act to any place in India; if at any time before his trial he make it appear to the court exercising criminal jurisdiction in the place where he is so charged or brought for trial, that in case the offence charged had been committed in such place, he could have been tried only in the supreme court of one of the three presidencies in India, and claim to be tried by such supreme court accordingly, the said court exercising criminal jurisdiction as aforesaid, shall certify the fact and claim to the governor of such place or chief local authority thereof, and such governor or chief local authority thereupon shall order and cause the person charged to be sent in custody to such one of the presidencies as such governor shall think fit, for trial before the supreme court of such presidency; and the said supreme court and all public officers and other persons in the presidency shall have the same jurisdiction and authority, and proceed in the same manner in relation to the person charged with such offence, as if the same had been committed, or originally charged to have been committed, within the limits of the ordinary jurisdiction of such supreme court."

**Sect. 4. Offences committed by a Servant of the Queen within a Foreign Allied State.**—Every servant of the Queen shall be subject to punishment under this Code for every act or omission contrary to the provisions thereof, of which he, whilst in such service, shall

be guilty on or after the said 1st day of May 1861 (1st day of January 1862), within the dominions of any Prince or State in alliance with the Queen, by virtue of any treaty or engagement heretofore entered into with the East India Company, or which may have been or may hereafter be made in the name of the Queen by any Government of India.

**Sect. 5.** *Certain Acts not to be repealed.*—Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of the statute 3 & 4 Will. IV. c. 85, or of any Act of Parliament passed after that statute in anywise affecting the East India Company, or the said territories, or the inhabitants thereof; or any of the provisions of any Act for punishing mutiny and desertion of officers and soldiers in the service of her Majesty or of the East India Company, or of any Act for the government of the Indian navy, or of any special or local law.

## CHAPTER II.

## GENERAL EXPLANATIONS.

**Sect. 6. *Definitions to be subject to exceptions.***—Throughout this Code (the Indian Penal Code), every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapter entitled “General Exceptions,” though those exceptions are not repeated in such definition, penal provision, or illustration.

*Illustrations.*

- (a) The sections in this Code which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.
- (b) A, a police officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement, for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that “nothing is an offence which is done by a person who is bound by law to do it.”

**Sect. 7. *Expressions always used in conformity with explanation.***—Every expression which is explained in any part of this Code is used in every part of this Code in conformity with the explanation.

**Sect. 8. *Gender.***—The pronoun “he” and its derivatives are used of any person, whether male or female.

**Sect. 9. *Number.***—Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

**Sect. 10. *Man, Woman.***—The word “man” denotes a male human being of any age; the word “woman” denotes a female human being of any age.

**Sect. 11. *Person.***—The word “person” includes any company or association or body of persons, whether incorporated or not.

**Sect. 12. *Public.***—The word “public” includes any class of the public, or any community.

**Sect. 13. *Queen.***—The word “Queen” denotes the sovereign for the time being of the United Kingdom of Great Britain and Ireland.

**Sect. 14. *Servant of the Queen.***—The words “servant of the Queen” denote all officers or servants continued, appointed, or employed in India by or under the authority of the said statute 21 & 22 Vict. c. 106, entitled “An Act for the better Government of India,” or by or under the authority of the Government of India or any Government.

**Sect. 15. *British India.***—The words “British India” denote the territories which are or may become vested in her Majesty by the said statute 21 & 22 Vict. c. 106, entitled “An Act for the better Government of India,” except the Settlement of Prince of Wales Island, Singapore, and Malacca.—(H.C. Act xviii. of 1862, s. 57.)

**Sect. 16. *Government of India.***—The words “Government of India” denote the Governor-General of India in Council, or, during the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone, as regards the powers which may be lawfully exercised by them or him respectively.

**Sect. 17. *Government.***—The word “Government” denotes the person or persons authorised by law to administer executive government in any part of British India.

**Sect. 18. *Presidency.***—The word “presidency” denotes the territories subject to the government of a presidency.

**Sect. 19. *Judge.***—The word “judge” denotes not only every person who is officially designated as a judge, but also every person who is empowered by law to give, in any legal proceeding, civil or

criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

*Illustrations.*

- (a) A collector exercising jurisdiction in a suit under Act x. of 1859 is a judge.
- (b) A magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a judge.
- (c) A member of a punchayet which has power, under Regulation vii., 1816, of the Madras Code, to try and determine suits, is a judge.
- (d) A magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another court, is not a judge.

**Sect. 20. Court of justice.**—The words “court of justice” denote a judge who is empowered by law to act judicially alone, or a body of judges which is empowered by law to act judicially as a body when such judge or body of judges is acting judicially.

*Illustration.*

A punchayet acting under Regulation vii., 1816, of the Madras Code, having power to try and determine suits, is a court of justice.

**Sect. 21. Public servant.**—The words “public servant” denote a person falling under any of the descriptions hereinafter following—viz. :

*First,* Every covenanted servant of the Queen.

*Second,* Every commissioned officer in the military or naval forces of the Queen while serving under the Government of India, or any Government.

*Third,* Every judge.

*Fourth,* Every officer of a court of justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge

or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the court; and every person specially authorised by a court of justice to perform such duties.

*Fifth*, Every jurymen, assessor, or member of a punchayet, assisting a court of justice or public servant.

*Sixth*, Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any court of justice, or by any other competent public authority.

*Seventh*, Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement.

*Eighth*, Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience.

*Ninth*, Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue process, or to investigate or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government; and every officer in the service or pay of Government, or emunerated by fees or commission for the performance of any public duty.

**Note.**—A peon of the collector's court who received no fixed pay from the Government, but was remunerated by fees whenever employed to serve process, and who was placed on the register of supernumerary peons, was held a public servant.—*Reg. v. Ramkrishna Das*, 7 B.L.R. 447, and *sub nom.* *Reg. v. Ramkisto Dass*, S.C. 16 W.R. Crim. 27.

*Tenth*, Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town, or district.

**Note.**—An engineer who receives and pays to others municipal

moneys is a public servant within the meaning of this clause, although he may not have the power of sanctioning the expenditure of such moneys.—*Reg. v. Nantaram Uttamram*, 6 Bom. H.C.R.C.C. 64. So is every registering officer applied under Act viii. of 1871, s. 82.

*Illustration.*

A municipal commissioner is a public servant.

*Explanation 1.*—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

*Explanation 2.*—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

**Sect. 22. Movable property.**—The words “movable property” are intended to include corporeal property of every description, except land and things attached to the earth, or permanently fastened to anything which is attached to the earth.

**Sect. 23. Wrongful gain—Wrongful loss.**—“Wrongful gain” is gain by unlawful means of property to which the person gaining it is not legally entitled. “Wrongful loss” is the loss by unlawful means of property to which the person losing it is legally entitled.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

**Sect. 24. Dishonestly.**—Whoever does any thing with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing “dishonestly.”

**Sect. 25. Fraudulently.**—A person is said to do a thing “fraudulently” if he does that thing with intent to defraud, but not otherwise.

**Sect. 26. Reason to believe.**—A person is said to have “reason to believe” a thing, if he has sufficient cause to believe that thing, but not otherwise.

**Sect. 27. Property in possession of wife, clerk, or servant.**—When property is in the possession of a person’s wife, clerk, or ser-



vant, on account of that person, it is in that person's possession within the meaning of this Code.

*Explanation.*—A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

**Sect. 28. Counterfeit.**—A person is said to “counterfeit” who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

*Explanation.*—It is not essential to counterfeiting that the imitation should be exact.

**Sect. 29. Document.**—The word “document” denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

*Explanation 1.*—It is immaterial by what means or upon what substance the letters, figures, or marks are formed, or whether the evidence is intended for, or may be used in, a court of justice or not.

*Illustrations.*

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power of attorney is a document.

A map or plan which is intended to be used, or which may be used, as evidence, is a document.

A writing containing directions or instructions is a document.

*Explanation 2.*—Whatever is expressed by means of letters, figures, or marks, as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this section, although the same may not be actually expressed.

*Illustration.*

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be con-

strued in the same manner as if the words "pay to the holder," or words to that effect, had been written over the signature.

**Note.**—A writing which is not legal evidence of the matter expressed, may yet be a document within the meaning of this section if the parties framing it believed and intended it to be evidence of such matter.—Reg. v. Shifait Ali, 2 B.L.R. A. Cr. J. 12, and 10 W.R. Crim. 6. In this case the document was a draft petition intended to be used as evidence of its contents. Thus, for an offence to be committed under Sect. 464, it is not necessary that the document as to which the forgery is alleged should, apart from such forgery, be legal evidence of the matter in such document contained.

**Sect. 30. Valuable security.**—The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

#### *Illustration.*

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security."

**Note.**—A settlement of accounts in writing, although not signed by any person, is a "valuable security" within the meaning of this section.—Reg. v. Kapalavaya Saraya, 2 Madras H.C. Rep. 247. A copy of a lease is not (Reg. v. Khusal Hiranman, 4 Bom. H.C.R.C.C. 28), a deed of divorce is, a valuable security within this section.—Reg. v. Azimooddeen, 11 W.R. Crim. 15.

**Sect. 31. A will.**—The words "a will" denote any testamentary document.

**Sect. 32. Acts include omissions.**—In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

**Sect. 33. Act—Omission.**—The word "act" denotes as well a series of acts as a single act; the word "omission" denotes as well a series of omissions as a single omission.

**Sect. 34. Joint act.**—When a criminal act is done by several

persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.

**Note.**—The words in this section “in furtherance of the common intention of all” are added under the amending Act xxvii. of 1870.

**Sect. 35. *Joint intent.***—Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention, is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

**Sect. 36. *Effect caused partly by act and partly by omission.***—Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission, is the same offence.

*Illustration.*

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

**Sect. 37. *Participation in series of acts.***—When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

*Illustrations.*

- (a) A and B agree to murder Z by severally, and at different times, giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder, and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.
- (b) A and B are joint jailers, and as such have charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in

causing that effect by illegally omitting each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

- (c) A, a jailer, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food, in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder; but as A did not co-operate with B, A is guilty only of an attempt to commit murder.

**Sect. 38. *Division of criminal act.***—Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

*Illustration.*

A attacks Z under circumstances of such grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z, and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

**Sect. 39. *Voluntarily.***—A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

*Illustration.*

A sets fire by night to an inhabited house in a large town, for the purpose of facilitating a robbery, and thus causes the death of a person. Here A may not have intended to cause death, and may even be sorry that death has been caused by his act, yet if he knew that he was likely to cause death, he has caused death voluntarily.

**Sect. 40. *Offence.***—Except in the chapter and sections mentioned in clauses 2 and 3 of this section, the word “offence” denotes a thing made punishable by this Code.

In Chapter IV. and in the following sections—namely, Sections 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389, and 445, the word “offence” denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in Sections 141, 176, 177, 201, 202, 212, 216, and 441, the word “offence” has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

**Note.**—This section as it stands is a substitution under the amending Act xxvii. of 1870 for the original section, which was to the effect that “the word ‘offence’ denotes a thing made punishable by this, the Indian Penal Code.”

Nothing contained in the amending Act xxvii. of 1870 shall be taken to affect any of the provisions of any special or local law (Sect. 15, Act xxvii. of 1870). The word “offence” does not (it would appear) extend to offences punishable by English law (Sects. 41 and 42), but see note to Sect. 109. The definition of the word in the High Court Crim. Pro., Sect. 3, is not restricted at all.

**Sect. 41. *Special law.***—A “special law” is a law applicable to a particular subject.

**Sect. 42. *Local law.***—A “local law” is a law applicable only to a particular part of British India.

**Sect. 43. *Illegal—Legally bound to do.***—The word “illegal” is applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be “legally bound to do” whatever it is illegal in him to omit.

**Sect. 44. *Injury.***—The word “injury” denotes any harm whatever illegally caused to any person, in body, mind, reputation, or property.

**Sect. 45. *Life.***—The word “life” denotes the life of a human being, unless the contrary appears from the context.

**Sect. 46. *Death.***—The word “death” denotes the death of a human being, unless the contrary appears from the context.

**Sect. 47. *Animal*.**—The word “animal” denotes any living creature other than a human being.

**Sect. 48. *Vessel*.**—The word “vessel” denotes anything made for the conveyance by water of human beings, or of property.

**Sect. 49. *Year*—*Month*.**—Wherever the word “year” or the word “month” is used, it is to be understood that the year or the month is to be reckoned according to the British calendar (Act xxv. of 1861, Sect. 20).

**Sect. 50. *Section*.**—The word “section” denotes one of those portions of a chapter of this Code which are distinguished by prefixed numeral figures.

**Sect. 51. *Oath*.**—The word “oath” includes a solemn affirmation substituted by law for an oath, and any declaration required or authorised by law to be made before a public servant, or to be used for the purpose of proof, whether in a court of justice or not.

**Sect. 52. *Good faith*.**—Nothing is said to be done or believed in good faith, which is done or believed without due care and attention.

**Note.**—See Sect. 3 Crim. Procedure Code, and the General Clauses Act, 1868, for further definitions.

## CHAPTER III.

## PUNISHMENTS.

**Sect. 53. *Punishments.***—The punishments to which offenders are liable under the provisions of this Code (the Indian Penal Code) are—

*First, Death.*

*Secondly, Transportation.*

*Thirdly, Penal servitude.*

*Fourthly, Imprisonment, which is of two descriptions—namely :*

(1.) Rigorous ; that is, with hard labour.

(2.) Simple.

*Fifthly, Forfeiture of property.*

*Sixthly, Fine.*

**Note.**—Whipping may be the punishment adjudged for certain offences—see Act vi. of 1864.

Offences which are punishable with imprisonment, and for which the offender is also liable to fine, cannot be punished with fine only, but some term of imprisonment must be awarded.—Reg. v. Chenviowa, 1 Bombay, H.C. Rep. 4 ; Reg. v. Rama bin Rubhajee, *id.* 34 ; Reg. v. Buheerjee bin Krishnajee, *id.* 39.

**Sect. 54. *Commutation of Sentence of Death.***—In every case in which sentence of death shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

**Sect. 55. *Commutation of Sentence of Transportation for Life.***—In every case in which sentence of transportation for life shall have been passed, the Government of India, or the Government of the

place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

**Note.**—See Sect. 322 of the Criminal Procedure Code.

**Sect. 56. *Europeans and Americans to be Sentenced to Penal Servitude instead of Transportation.***—Whenever any person being a European or American is convicted of an offence punishable under this Code with transportation, the court shall sentence the offender to penal servitude instead of transportation, according to the provisions of Act xxiv. of 1855.

Provided that, where a European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the court seems fit, but not for life.

And see Act xxiv. of 1855.

The proviso to the section is added under the amending Act xvii. of 1870.

**Sect. 57. *Equivalent of Transportation for Life.***—In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years.

**Sect. 58. *Offenders Sentenced to Transportation how to be dealt with until Transportation.***—In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

**Note.**—See Sects. 319, 320 of the Criminal Procedure Code.

**Sect. 59. *Transportation instead of imprisonment.***—In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment.

**Note.**—The provisions of this section must be read in conjunction with those of Sects. 18 and 22 of the Criminal Procedure



Code. Therefore an ordinary magistrate, who can only sentence to two years' imprisonment, cannot sentence to transportation for seven years, or more, in lieu thereof, merely because the offence before him is *punishable* with imprisonment for seven years and upwards; but an officer empowered under Sect. 36 of the Criminal Procedure Code to imprison up to seven years, having passed this maximum sentence, may commute it for not less than seven years' transportation.—Reg. v. Boodhooa, 5 R.C.C. Cr. 20, 3 Mad. Jur. 151, and 9 W.R. Crim. 6.

No sentence of transportation for less than seven years can be passed on any charge.—Reg. v. Gour Chunder Roy, 8 W.R. Crim. 2.

To bring this section into operation, the punishment must be seven years' imprisonment for one offence alone, and cannot be made up by adding two sentences together, and then commuting the amalgamated period to transportation (2 W.R. Crim. 1), nor by adding a present sentence to an unexpired portion of another sentence.—Reg. v. Sakya valad Kaoji, 5 Bom. H.C.R.C.C. 36.

A was convicted of an attempt to commit rape, and was sentenced by the judge to seven years' imprisonment, which he commuted to transportation for the same period. Held that under Sects. 376 and 511 a sentence of imprisonment for the offence committed could not be more than five years, and such sentence could not be commuted to transportation for a longer period, although, if the sentence of transportation had been passed in the first instance, it might have been for ten years.—1 B.C.R.A. Cr. 5, & 10 W.R. Crim. 10. (See additional Note, p. 42.)

**Sect. 60.** *Sentence of Imprisonment wholly or partially rigorous or simple.*—In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

**Note.**—For exceptions to rule that imprisonment commences from date of sentence, see Sects. 281, 314, 316, and 317 of the Criminal Procedure Code.

**Sect. 61.** *Forfeiture of Property.*—In every case in which a person is convicted of an offence for which he is liable to forfeiture of all his property, the offender shall be incapable of acquiring any

property, except for the benefit of Government, until he shall have undergone the punishment awarded, or the punishment to which it shall have been commuted, or until he shall have been pardoned.

*Illustration.*

A being convicted of waging war against the Government of India is liable to forfeiture of all his property. After the sentence, and whilst the same is in force, A's father dies, leaving an estate which, but for the forfeiture, would become the property of A. The estate becomes the property of Government.

**Sect. 62. *Forfeiture of Property of Offenders punishable with Death, Transportation, or Imprisonment.***—Whenever any person is convicted of an offence punishable with death, the court may adjudge that all his property, movable and immovable, shall be forfeited to Government; and whenever any person shall be convicted of any offence for which he shall be transported, or sentenced to imprisonment for a term of seven years or upwards, the court may adjudge that the rents and profits of all his movable and immovable estate during the period of his transportation or imprisonment shall be forfeited to Government, subject to such provision for his family and dependants as the Government may think fit to allow during such period.

**Note.**—Forfeiture of property is a punishment of which the infliction should be reserved for offences of the most atrocious kind, or for offences committed under the most aggravated circumstances,—for by such punishment, not only is the prisoner punished, but his family is impoverished.—*Reg. v. Mahomed Akhir*, 12 W.R. Crim. 17. No forfeiture at all can take place on sentence less than transportation or seven years' imprisonment.—*Reg. v. Kripamoyee Chassanee*, 8 W.R. Crim. 35.

**Sect. 63. *Amount of Fine.***—Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

**Note.**—See Sect. 308 of the Criminal Procedure Code.

**Sect. 64. *Imprisonment in Default of Payment of Fine.***—In every case in which an offender is sentenced to a fine, it shall be competent to the court which sentences such offender to direct by

the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence.

**Note.**—Where the accused was convicted under Sect. 48 of Act xxiv. of 1859, and sentenced to pay a fine, or, in default, be imprisoned, it was held that the award of imprisonment in default of payment of fine was irregular, the procedure being that laid down in the Madras Act v. of 1865, and Sect. 64 of the Indian Penal Code only applying to offences under the Code.—7 Mad. H.C. Reps. App. xxii. This ruling followed that reported in 3 Mad. H.C.R. App. ix., and overruled those reported in 5 Mad. H.C. Reps. App. xxi., xxiii., where an award of imprisonment in default of payment of fine for an offence under like circumstances was held a mere informality, not affecting the legality of the sentence.

**Sect. 65.** *Limit of Term of Imprisonment when the Offence is punishable with Imprisonment as well as Fine.*—The term for which the court directs the offender to be imprisoned in default of payment of a fine, shall not exceed one-fourth of the term of imprisonment, which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

**Note.**—See Criminal Procedure Code, Sect. 309. .

**Sect. 66.** *Description of Imprisonment.*—The imprisonment which the court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

**Sect. 67.** *Term of Imprisonment when the Offence is punishable with Fine only.*—If the offence be punishable with fine only, the term for which the court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale—that is to say: for any term not exceeding two months, when the amount of the fine shall not exceed fifty rupees; and for any term not exceeding four months, when the amount shall not exceed one hundred rupees; and for any term not exceeding six months in any other case.

**Note.**—In the case of an offence punishable by fine and imprisonment, or fine only, and the magistrate fines only, but allots imprisonment in default of payment of fine, the term of imprison-

ment is governed by this section, not Sect. 65.—Reg. v. Chunder Pershad Sing, 10 W.R. Crim. 30.

**Sect. 68.** *Imprisonment to terminate upon Payment of the Fine.*—The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

**Note.**—See Criminal Procedure Code, Sect. 307.

The power of levying the fine is restricted to the court sentencing the offender, but the word “court” is not restricted to the particular person who held the office at the time the offender was sentenced. Therefore the successor of a session judge may levy a fine imposed by his predecessor, and the same rule applies to other officers by whom fines are imposed.—Chunder Coomar Mitter v. Modhoosoodun Dey, 9 W.R. Crim. 50.

**Sect. 69.** *Payment of Proportional Part of Fine.*—If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

*Illustration.*

A is sentenced to a fine of one hundred rupees, and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

**Note.**—A prisoner was sentenced to imprisonment and fine, and in

default of payment of fine to a further term of imprisonment. He paid a portion of the fine, but that fact not having been communicated to the jailer, underwent the full term of imprisonment. Held that the court had no power to order the fine to be refunded.—*Reg. v. Natha Mula*, 4 Bom. H.C.R.C.C. 37.

**Sect. 70.** *Fine may be Levied within Six Years—Death of Offender.*—The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

**Note.**—See Sect. 307 of the Criminal Procedure Code.

The law has provided for the distress and sale of movable property only, and there is no way in which immoveable property may be made liable to pay the fine. Immoveable property cannot therefore be proceeded against even after the death of the offender.—*Reg. v. Lallu Karwar*, 5 Bom. H.C.R.C.C. 63.

**Sect. 71.** *Limit of Punishment of Offence made up of several Offences.*—Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

#### *Illustration.*

- (a) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.
- (b) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

**Note.**—See notes to Sects. 314 and 454 of the Criminal Procedure Code.

In the case of *Reg. v. Chunder Kant Lahoree*, 12 W.R. Crim. 2, where the defendant used criminal force to rescue a prisoner from constables, it was held he could not be convicted both of the criminal force and the rescue. But this does not now hold, and a like case stands as an illustration (Sect. 454, illus. (a) Crim. Pro. Code) of cases in which a separate charge, conviction, and punishment for both offences will be good.

A prisoner charged under different sections with substantially the same offence, where the acts which are the basis of his conviction on one charge are the same as the acts which are the basis of his conviction on another charge, cannot be sentenced as for separate offences.—*Reg. v. Zorn Karnbeg*, 4 Bom. H.C.R.C.C. 12; *Reg. v. Oind Sheikh*, 3 B.L.R.A. Cr. J. 15, note; and *Reg. v. Kali Sankar Sandyal*, *ib.* 14.

Where prisoners were convicted of three separate offences, but the magistrate had passed a single sentence of four years' rigorous imprisonment, it was held that the proper course would have been to give a separate sentence in each case, as in the event of appeal and reversal of the conviction in one or two of the cases, it would not have been practicable to determine to what portion of the aggregate imprisonment the prisoners remained liable.—4 Mad. H.C. Rulings, App. xxvii.

**Sect. 72.** *Punishment of a Person found Guilty of one of several Offences.*—In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided, if the same punishment is not provided for all,

**Note.**—See Sect. 455 of the Criminal Procedure Code.

**Sect. 73.** *Solitary Confinement.*—Whenever any person is convicted of an offence for which under the Code the court has power to sentence him to rigorous imprisonment, the court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say :—

A time not exceeding one month, if the term of imprisonment shall not exceed six months.

A time not exceeding two months, if the term of imprisonment shall exceed six months, and be less than a year.

A time not exceeding three months, if the term of imprisonment shall exceed one year.

**Sect. 74. *Limit of Solitary Confinement.***—In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

**Note.**—Magistrates of the first and second class may pass sentences of solitary confinement. Magistrates of the third class have not this power.—Sect. 20 of the Criminal Procedure Code.

Solitary confinement must not be imposed for the whole term of a person's imprisonment, even though not exceeding fourteen days. *In re Nayan Suk Methar*, 3 B.L.R.A. Cr. J. 49.

**Sect. 75. *Punishment after previous Conviction in certain Cases.***—Whoever, having been convicted of an offence punishable under Chapter XII. or Chapter XVII. of this Code, with imprisonment of either description for a term of three years and upwards, shall be guilty of any offence punishable under either of those chapters with imprisonment of either description for a term of three years and upwards, shall be subject for every such subsequent offence to transportation for life, or to double the amount of punishment to which he would otherwise have been liable for the same; provided that he shall in no case be liable to imprisonment for a term exceeding ten years.

**Note.**—The previous offence must have been committed since the Penal Code came into operation.—5 R.J. and P. 152; 1 R.C.C. Cr. 60; *Reg. v. Krishya bin Yesu*, 4 Bombay H.C. Rep. C.C. 11. The subsequent offence must also be one committed after release from prison upon the previous conviction.—1 R.C.C. Cr. 60.

The date of the previous conviction should be entered in the charge.—1 R.J. and P. 562. Or, if there should be any doubt as

to whether the offence was really a prior one, then the date of the commission of the offence also should be inserted.

The Bengal High Court has ruled "that the previous conviction of the prisoner should not be entered in the charge against him, but should be brought forward by the prosecution after the conviction, and be taken into consideration by the judge when passing sentence. To enter such a circumstance in the charge would be apt, very improperly, to prejudice the jury trying the case."—1 R.C.C. Circ. 26. But this is not the practice in England, where previous convictions are always entered on the indictment in cases of felony, so as to allow the prisoner to claim a formal trial on that charge also if he so desire it; and the count containing the previous conviction is not read to the jury, until the prisoner has been convicted of the subsequent offence. In fact, he is not called upon to plead to it, until the other is disposed of against him. In accordance with this practice, the Madras High Court has ruled that "the previous conviction should be made a separate head of charge on the trial for the subsequent offence."—Madras H.C. Rulings, 1864, on Sect. 75. But that to prevent any injustice to the prisoner the procedure should be, "first to try the prisoner on the substantive charge then under inquiry, and if he should be convicted on that charge, to charge him with, and try the fact of, the previous conviction. —Madras H.C. Rulings, 1865, on Sect. 75.

The following is the form of a charge of a previous conviction according to the ruling of the Madras High Court, 17th April 1868, 3 Madras Jurist, 284:—

"That he, the said A B, before the committing of the said offence, was convicted, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_ in Calendar No. \_\_\_\_\_ of \_\_\_\_\_ on the file of \_\_\_\_\_, of an offence punishable under Chapter XVII. (or XII.) of the Indian Penal Code with imprisonment for a term of three years, to wit, with the offence of \_\_\_\_\_, which conviction is still in full force and effect; and that he, the said A B, is thereby liable to enhanced punishment under Sect. 75 of the Indian Penal Code, and within," &c.

How to prove a previous conviction is set forth in Sect. 326 o. the Criminal Procedure Code:—

"Where a previous conviction or acquittal is to be proved against an accused person, application shall be made to the officer in whose



custody the records of such trial may be. It shall not be necessary to produce the record of the conviction or acquittal of such accused person, or a copy thereof, but an extract may be produced in proof of such conviction or acquittal, if certified under the hand of the clerk of court, or other officer having the custody of the records of the court in which such conviction or acquittal was had, or by the deputy of such clerk or officer, to be a copy of the charge, finding, and sentence, as the case may be."

The finding of a previous conviction will be entered in a form similar to that of the charge given above.

This section does not create a separate offence, but only imposes a liability to enhanced punishment. So where a magistrate sentenced a prisoner to six months' rigorous imprisonment, under Sect. 457 of the Penal Code, and, finding the prisoner was liable to enhanced punishment under Sect. 75 of the Penal Code, sentenced the prisoner to six months' further imprisonment under Sect. 314 of the Criminal Procedure Code, the latter sentence was set aside by the High Court.—*Mad. H.C. Rulings, App. iii.*

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*Additional Note to Sect. 59, p. 34*

This section refers to all cases, not simply to those of offences where imprisonment is the sole punishment. So where an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment.—*R. v. Naiada, 1 In. L.R. All. 43.*

## CHAPTER IV.

## GENERAL EXCEPTIONS.

**Sect. 76.** *Act done by a Person believing himself bound by Law.*

—Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

*Illustrations.*

- (a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.
- (b) A, an officer of a court of justice, being ordered by that court to arrest Y, and, after due inquiry, believing Z to be Y, arrests Z. A has committed no offence.

**Sect. 77.** *Act of Judge when acting judicially.*—Nothing is an offence which is done by a judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

**Sect. 78.** *Act done pursuant to the Judgment of a Court of Justice.*—Nothing which is done in pursuance of, or which is warranted by, the judgment or order of a court of justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the court had such jurisdiction.

**Sect. 79.** *Act done by a Person justified, or by mistake of fact believing himself justified, by Law.*—Nothing is an offence which is done by any person who is justified by law, or who by reason of a

mistake of fact and not by reason of a mistake of law in good faith believes himself to be, justified by law in doing it.

*Illustration.*

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

**Note.**—The foregoing sections simply say that under the circumstances therein referred to certain acts shall not amount to offences—that is, shall not be punishable under the provisions of the Indian Penal Code—but leave untouched the liability of the persons who claim their protection to a civil suit. Thus, although illustration (b) to Sect. 76 exempts an officer of justice from liability to criminal punishment for the acts therein described, it still leaves him exposed to liability to a civil suit, the result of which must depend upon the peculiar circumstances of each case.

In Sects. 76 and 79 the mistake must be one of fact and not of law; the person desiring to shelter himself under them must be under a mistaken impression as to the existence or non-existence of a state of facts which, if it did exist, would authorise him to apply a known law to that state: it will not be sufficient that under a well-understood state of facts a mistake has been made in applying the law. Illustration (a) is not a case of mistake at all. If the officer's order be in conformity with the commands of the law, it is because he is right in law—and the soldier is, of course, bound to obey him; but if the officer is wrong in his law, although the soldier is bound to obey him, yet the latter is not protected, but equally with his officer has committed an offence. Therefore it would seem that in fact (a) is not an apposite illustration to Sect. 76. It has been held in England that if a ship's sentinel shoots a man because he persists in approaching the ship when he has been ordered not to do so, the act will be murder unless it was necessary for the ship's safety.—*Rex v. Thomas*, 1 Russ. C. & M. 823, in which case it appeared that the prisoner was a sentinel on board the *Achille* while she was paying off, and had received orders from the

preceding sentinel to keep off all boats, unless they had officers in uniform in them, or unless the officers on board allowed them to approach ; and he received a musket, three blank cartridges, and three balls. Boats pressed upon the ship, and would not keep off, although repeatedly warned to do so ; whereupon the prisoner fired at the man in one which persisted in coming nearer and closer than the others, and killed him. The jury found that the sentinel had fired under the mistaken impression that it was his duty to do so : but the judges were nevertheless unanimously of opinion that the act amounted to murder ; but that if the act had been necessary for the preservation of the ship—as if, for instance, the deceased had been endeavouring to stir up a mutiny—then it would have been justifiable. Soldiers are only armed citizens ; and the orders of their officers do not justify any acts of violence, unless the orders themselves are legal. There has, however, since been a decision which somewhat modifies the preceding one—viz., that of *Reg v. Hutchinson*, 9 Cox. C.C. 555. There a gun, discharged in the ordinary and regular course of ball-practice by an artilleryman in a garrison town, missed the mark, and killed a man who was lawfully passing near the spot in a boat, the place being a public one, and open to all her Majesty's subjects. The artilleryman who fired the gun was acting under the command of a superior officer, who was acting in obedience to the general orders of the major-general, and it was held that the major-general was not guilty of manslaughter.

The same principle applies to other officials. No official is excused in doing an illegal act, although ordered to do it by his superior ; and the inferior is supposed to be cognisant of what is and what is not legal. Not even the orders of the Supreme Government of India, or of the Secretary of State for India, would excuse an illegal act, unless the whole transaction was a State act. It is exceedingly difficult to define what is an act of State ; but it would appear, from the decisions on the subject, that actions taken by a State against its subjects in ordinary times cannot be acts of State, but that there must be some antagonism or incipient antagonism of position between the two parties. This much may be remarked in the decisions, that they all arise out of transactions in which a sovereign power has done some act to an independent or semi-independent State, or to the subject of another State, or to one of its own subjects in a state of rebellion, and not out of ordinary

transactions between a State and its subjects. The principal cases are—*Le Caux v. Eden*, 2 Doug. 594; *Lindo v. Rodney*, 2 Doug. 613; *Syed Ally v. The East India Company*, 7 Moore's I.A. 555; *Kamachee Boye v. The East India Company*, 7 Moore's I.A. 476; *The ex-Rajah of Coorg v. The East India Company*, 29 Beav. 300;—and on reference to these it will be seen that the acts complained of were done by one party to another independently, in fact or belief, of the former.

The liabilities and immunities of judicial officers have been carefully discussed and decided in the English courts; but as most of the decisions are upon the question whether or not they are liable to an action at the suit of the party alleged to be injured, it is evidently unnecessary to cite those decisions here, as the present sections refer to criminal proceedings only: but it may be useful to quote a few of the cases where the court gave judgment on applications for criminal informations against judicial officers. In this class of cases it is laid down that when a justice of the peace acts from indirect or corrupt motives, the court will punish him by information.—*Rex v. Cozens*, 2 Dougl. 426. But no information will be granted against justices acting in sessions, except in very flagrant cases.—*Rex v. Seaford (Justices)*, 1 W. Bl. 432. On an application for a rule *nisi* for a criminal information against a magistrate, the question is not whether the act done might on full investigation be found to be strictly right, but whether it proceeded from oppressive, dishonest, or corrupt motives (under which fear and favour may generally be included), or from mistake or error; in either of the latter instances the court will not grant the rule.—*Reg. v. Barron*, 3 B and Ad.; *In re Fentiman*, 2 A. and E. 127; *Reg. v. Badger*, 4 Q.B. 468, 7 Jurist, 216, and 12 L.J.M.C. 66. So wherever magistrates act uprightly, though they mistake the law, no information will be granted against them.—*Rex v. Jackson*, 1 T.R. 653.

The court will not grant an information against a magistrate for having improperly convicted a person unless the party complaining makes an exculpatory affidavit denying the facts.—*Rex v. Webster*, 3 T.R. 388. And in all cases the party applying for an information must come into court with clean hands.—*Rex v. Eden*, Lofft. 72.

A criminal information was refused against a magistrate for returning to a writ of *certiorari* a conviction of a party in another

and more formal shape than that in which it was first drawn up, and of which a copy had been delivered to the party convicted by the magistrate's clerk—the conviction being warranted by the facts.—*Rex v. Barker*, 1 East. 186. So, too, a rule *nisi* for an information making a commitment without previously taking the prosecutor's oath, who was a peer of the realm, and also for neglecting to take the noble prosecutor's recognisance to prosecute, was discharged, these omissions being deemed only irregular, not criminal.—*Rex v. Fielding*, 2 Burr. 719. But where a magistrate, upon whose property a malicious trespass had been committed, issued a summons requiring the offender to appear before himself or some other magistrate, and purporting that informations had been given to him (the magistrate) on oath, whereas no oath had been taken, and the information had been communicated by the magistrate to the informer, the court, in discharging a rule for a criminal information against the magistrate, refused to give him his costs.—*Rex v. Whately*, 4 M. & R. 431.

An information will be granted against justices of the peace as well for granting as for refusing a licence for the sale of ale improperly—*Rex v. Holland*, 1 T.R. 692; as from motives of resentment—*Rex v. Harris*, 3 Burr. 1716; or because the applicant voted for members of Parliament for the borough against the recommendation of the justices—*Rex v. Williams*, 3 Burr. 1318.

A rule for a criminal information will not be granted against justices who wrongly or improperly reject bail, unless it manifestly appears to the court, by satisfactory and conclusive evidence, that they were influenced by partial and corrupt motives.—*Rex v. Badger*, 6 Jur. 994 (Bail Court). Where the pecuniary sufficiency and solvency of bail are undisputed, the rejection of such bail on the ground of a coincidence of political opinion with the person or persons for whose appearance the bail offer to become security is improper, even though such rejection by the justices is reconcilable with the absence of corrupt motives—*ib.*; and where justices do reject bail on the ground that the parties entertain objectionable political opinions, and on other grounds which are concealed and not stated, the court will grant a rule *nisi* for a criminal information—*ib.*; and where, in answer to such a rule, the justices deposed that they were not actuated by any corrupt or malicious motive in pursuing the course they had adopted, although the court discharged

the rule, the justices were required to pay all the costs.—S.C., 4 Q.B. 468 ; 7 Jur. 216 and 12 L.J.M.C. 66.

The provisions of Sect. 77 only protect a “judge”—*i.e.*, “every person who is officially designated as a judge,” and “every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment,”—Sect. 19, I.P.C.; but not “a magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another court,” though it is very probable that, in respect to the granting or refusing bail during the pendency of such a charge, or on commitment, he would be held to be a judge, seeing that this is a “legal proceeding” in which he is empowered to give a definitive judgment, and on grounds and under powers unconnected with the facts on which, or the powers under which, the commitment is made.

An officer of a court is ordinarily bound to obey every order of the court to which he is subject; and it must be a very flagrant overstepping of jurisdiction, and one which was apparent on the face of the authority under which he was acting, which would justify him in refusing obedience—for in all cases, in the first instance at any rate, the court itself has to decide the question of jurisdiction, and that judgment is binding until it is reversed by a superior court; and thus the law would always presume very strongly that the person doing the act in good faith believed that the court had jurisdiction.

Where *peons*, acting under civil process, arrested a witness on his way to court, who, as such, was privileged *cundo, morando et redeundo*, and persisted in the arrest after due notice, it was held that they were not protected under this section, as, although the officer issuing the warrant had jurisdiction, yet special circumstances had arisen after the issue which took away the jurisdiction of the *peons* to execute the warrant.—5 R.J. & P. 43. So in a case where a bailiff, in executing process against the movable property of a judgment debtor, broke open the gate.—3 R.C.C. Cr. 8.

As under Sect. 77 the protection thereby given is restricted to a certain class of judicial officers, so under Sect. 78 protection is

afforded only to officers acting under the authority of a "judgment or order" of a "*judge* who is empowered by law to act judicially alone, or a body of judges which is empowered by law to act judicially as a body, *when such judge or body of judges is acting judicially*;" Sect. 20, I.P.C., and this last proviso is also introduced *totidem verbis* into the body of Sect. 77: and in respect of this the Privy Council say, "It is not merely in respect of acts in court, acts *sedente curia*, in *Calder v. Halket*, 2 Moore, I.A., at p. 301, that a judge has immunity; but in respect of all acts of a judicial nature; and an order of the Foujdaree Court, to bring a native into that court, to be there dealt with on a criminal charge, is an act of a judicial nature, and, whether there was irregularity or error in it or not, would be punishable by ordinary process of law."

Furthermore, all these sections require "good faith;" and "nothing is said to be done or believed in good faith which is done or believed without due care and attention."—Sect. 52, I.P.C.

In the case of *Sheo Surun Sahai v. Mahomed Fazil Khan*, 10 W.R. Crim. 20, it was decided that a police-officer had not acted in good faith, and the facts as stated were these: "He sees a horse tied without any attempt at concealment in Bookoo's premises, and, because the animal happens to resemble one which his father had lost a short time previously, he jumps at once to the conclusion that Bookoo has either stolen the horse himself, or has purchased it from the thief, and he compels Bookoo to account for the possession accordingly. He finds that Bookoo bought the animal from one Sheo Surun Sahai, so he sends for that individual, charges him with the theft, and compels him to give bail for his appearance whilst an investigation is pending. The sub-inspector never sent for the supposed owner of the horse, or took the trouble of getting any credible information as to whether it was his father's horse or not. Had he done so, he would have found that the horse had already been discovered in another place; but without waiting for such information, and without making any further inquiry, he at once held Sheo Surun to bail, as a person suspected of having come by the animal dishonestly;" and the court held that the sub-inspector had not only not acted with due care and attention, but had not exercised any care or attention at all. When a person, having received information which causes him to suspect another of a felony which has in fact been committed by some one, gives him into cus-



today, without availing himself of a ready and obvious mode of ascertaining the truth as to whether or not the accused had in fact committed the felony, the absence of inquiry is an element in determining the question of the existence of reasonable and probable cause.—*Perryman v. Lister*, 3 L.R. Exch. 197, and 37 L.J.N.S. Exch. 166; and also an important element in determining whether a person has acted with due care and attention.

**Sect. 80.** *Accident in the doing of a lawful act.*—Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner, by lawful means, and with proper care and caution.

*Illustration.*

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

**Note.**—This section requires a determination of two sets of questions—one of law, and the other of fact. The court must decide what acts, manner, and means, are lawful; and the jury, or the court as a jury, must decide whether those charged against the accused agree or not with what is lawful, and also whether proper care and caution has been exercised. For although, if in the prosecution of a lawful act, a pure accident arises, no criminal or civil responsibility attaches to the actor—*Reg. v. Murray*, 5 Cox C.C. 509; yet it seems that it is otherwise where any blame is imputable, though the person is innocent of any intention to injure—as, if he drives a spirited horse improperly, or uses imperfect harness, and the horse takes fright and kills another—*Wakeman v. Robinson*, 1 Bing. 213. If a person is driving a cart at an unusually rapid pace, and drives over another and kills him, he is guilty of manslaughter, though he called to the deceased to get out of the way, and he might have done so if he had not been in a state of intoxication.—*Per Garrow, J.*, in *Rex v. Walker*, C. and P. 320. And if two carriages are driving close together, apparently racing, the question for the jury, as laid down by *Patteson, J.*, in *Rex v. Timmins*, 7 C. and P. 499, is—“whether you are satisfied that the prisoner was driving in such a negligent manner that, by reason of his gross negligence, he had lost the command of his horses; and that depends upon whether the horses were unruly, or whether you believe that he had been racing

with the other omnibus, and had so urged his horses that he could not stop them ; because, however he might be endeavouring to stop them afterwards, if he had lost the command of them by his own act he would be answerable."

These two points are constantly mixed the one with the other, and it is utterly impossible entirely to separate them, because circumstances are so constantly changing that it is impossible to lay down a rigid rule of law as to what constitutes negligence under all combinations of events. The care and caution requisite to be exercised varies with every case, and what is negligent under one set of circumstances, is quite excusable and justifiable under another. Thus the fact that streets are usually crowded from a public procession or any other cause, instead of excusing a driver when proceeding at his ordinary pace, and with ordinary care, requires him to be particularly cautious, and may tend to render him criminally responsible from any accident ensuing from driving at a rate and with those precautions which he might have ordinarily observed.—Reg. v. Murray. 5 Cox C.C. 509.

The mere happening of an accident is not sufficient evidence of negligence to be left to the jury, but some affirmative evidence of negligence on the part of the defendant must be given.—Hammack v. White, 11 C.B.N.S. 588, 31 L.J.N.S.C.P. 129. But accidents may be of such a nature that negligence may be presumed from the mere fact of the accident, or the mere fact of such an accident happening may be *prima facie* evidence of negligence, so as to throw on the defendant the duty of showing that there was no negligence.—Byrne v. Boadle, 2 H. and C. 722, 33 L.J.N.S. Exch. 13 ; Scott v. London Dock Company, 3 H. and C. 597, 10 Jur. N.S. 1107. On the contrary, there are cases where the accident carries on its face the impress of the absence of negligence. Thus, where a man discharged his gun before he went out to dinner, and on returning took it up and touched the trigger, when it went off and killed his wife, although the man was bound, in handling such a dangerous weapon, to take extra care, as illustrated in the preceding paragraph, yet seeing the fact was, that in his absence some one else had reloaded the gun without his knowledge, Foster, J., directed an acquittal, "being of opinion, upon the whole evidence, that he had reasonable ground for believing the gun was not loaded."—Foster, Cr. L. 265. So, too, in Alison's Crim. L. 144, there is a case cited in

which the prisoner was charged with having fired a fowling-piece loaded with small shot, in a field within shot of a highroad, where persons frequently passed, and in the direction of the road, and killed a girl who was passing at the time. It appeared in evidence that the shot was really a long one, being above fifty yards, and that it proved fatal only by one of the leads having unfortunately penetrated the child's eye, while the other shot hardly penetrated the skin. The court held that the death was accidental under these circumstances, and so the jury found. It has further been laid down by Willes, J., in *Reg. v. Birchall*, 4 F. and F. 1087, that a man is not criminally responsible for the death of another party caused by his negligence, where he would not have been civilly liable in an action in respect of the alleged negligence, at the suit of the party injured, if the injuries sustained had fallen short of causing his death.

There is one other very important class of cases—poisoning by the administration of medicines, and killing by surgical operations—which, however, will be more properly treated under Sects. 87, 88, and 89, *post*.

**Sect. 81.** *Act likely to cause harm, but done without a criminal intent, and to prevent other harm.*—Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

—*Explanation.*—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

#### *Illustrations.*

- (a) A, the captain of a steam-vessel, suddenly, and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with 20 or 30 passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur the risk of running down a boat C, with only two passengers on board, which he may possibly clear. Here, if A alters his course with-

out any intention to run down the boat C, and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C.

- (b) A in a great fire pulls down houses in order to prevent the conflagration from spreading. He does this with the intention, in good faith, of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

**Note.**—This is a section which is very difficult to comment on or elucidate. It is involved in its wording; the explanation practically says that it is a question of fact whether its provisions apply to a particular case, and the illustrations simply confirm the explanation without in any way helping to determine the question of fact on which the application of the whole section turns. There is only one illustration which can be obtained from the English law, but even that scarcely comes under this section, but rather under Sect. 96 and the following sections; and this one case, under the principle of which illustration (b) might perhaps be classed, is thus alluded to by Archbold: "There is one species of homicide *se defendendo* where the party slain is equally innocent as he who occasions his death; as, for instance, the case mentioned by Lord Bacon (Elem. c. 5; see also Hawk, c. 28, s. 26), where two persons, being shipwrecked, have got on the same plank, but, finding it not able to save them both, one of them thrusts the other from it, and he is drowned. This homicide is excusable through unavoidable necessity, and upon the principle of self-defence."

No theory can be started by which it can be decided where the necessity of doing harm arises in which there shall be an absence of "criminal intention" or the presence of "good faith." Certainly it must arise from accident or from the crime of another, not from the negligence or crime of the person doing the harm. In the opinion of the framers of the Penal Code, a theft to satisfy

the direst hunger would not come within this section, for they say in their report: "Nothing is more usual than for thieves to urge distress and hunger as excuses for their thefts. It is certain, indeed, that many thefts are committed from the pressure of distress so severe as to be more terrible than the punishment of theft, and than the disgrace which that punishment brings with it to the mass of mankind. It is equally certain that when the distress from which a man can relieve himself by theft is more terrible than the evil consequences of theft, those consequences will not deter him from committing theft. Yet it by no means follows that it is irrational to punish him for theft; for though the fear of punishment is not likely to keep any man from theft when he is actually starving, yet it is very likely to keep him from being in a starving state. It is of no effect to counteract the irresistible motive which immediately prompts to theft, but is of great effect to counteract the motives to that idleness and that profusion which end in bringing a man to that condition in which no law will keep him from committing theft." It is not impossible, however, to conceive cases of theft, for example, in which the thief might take advantage of this section in his defence, though, of course, the occurrence of such cases is very rare.

To further elucidate this very vague section, it may not 'be useless to transcribe a series of propositions and definitions from that part of Mr Stephen's 'General View of the Criminal Law of England' which is devoted to "the definition of crime in general." "An action may be said to consist of occurrence to the mind, deliberation, resolution, intention, will, and execution by—or, if the expression be allowed, translation into—a set of bodily motions co-ordinated towards the object intended; . . . but, in order that there may be any action at all, the will which causes and the intention which co-ordinates bodily action must always be present. The absence of both or either would prevent the action from taking place at all, or reduce it from an action to a mere occurrence, and in either case there would be no crime.

"In order to illustrate this, cases may be put to show the effect of the absence of both or either. First, Will and intention may both be absent. A man in a convulsive fit strikes another and kills him. He has committed no crime, because he has done no act; he has been acted upon. . . .

"Secondly, Will may exist without intention. This case is best illustrated by the motions of an infant. . . . Probably, somnambulism and other movements during sleep are of the same kind. . . .

"Thirdly, Intention may exist without will. This happens in the common case of a person who lays aside a plan he has formed. . . .

"The result of the whole is, that an action consists of voluntary bodily motions, *combined by the mind towards a common object*. Intention is in every case essential to crime, because it is essential to action; and every crime is an action, as appears from the use of active verbs in every indictment.

"Such are the mental conditions which belong to a crime as an action; but other mental conditions are attached to actions before they can be punished by the law. No action is criminal in itself unless the intent, the mental element of it, is a state of mind forbidden to the law. This state of mind varies according to the nature of the case. To utter a forged note is no crime, unless there be a knowledge that the note is forged, and also an intent to defraud. In order to bring a person within the statute which makes the infliction of certain bodily injuries felony, there must be a specific intent to commit murder or to inflict grievous bodily harm; killing is no murder unless there be malice. The appropriation of the property of another is not theft unless it be felonious. In short, in order to be a crime, an action must not only be intentional in the general sense already explained, but it must be accompanied with a specific intention forbidden by the law in that particular case.

"In some cases the specific intent is defined by the law which creates the offence—as, for example, in the case of wounding with intent to maim or disfigure; but it is more frequently denoted by the general term 'malice.' Malice may thus be said to be a necessary ingredient in one form or other of all crimes whatever. . . .

"The etymological meaning of the words malice and malicious is simply wickedness and wicked. . . .

"It is easy to exaggerate the vagueness of these words. In reality, the difficulty lies, not in the use of the words themselves, but in the theories by which we try to explain them. The proposition that lying is wicked is understood by millions who are ignorant of the very existence of all moral theories whatever. It

means that, in point of fact, it is blamed and under certain circumstances punished. The reason why it is blamed and punished are collateral to the fact; and it is with the facts and not with the theories about them that the law is concerned.

“Whatever may be the want of precision of these words, it has in practice been remedied by experience. The consequences of making malice in general terms a necessary element of crime is that certain acts—as, for example, the destruction of life or the appropriation of what belongs to another—are declared to be *prima facie* wicked actions, though circumstances may exist by which their wickedness is either removed or diminished. In the course of time experience shows what these circumstances are, and thus a technically exact conception of both theft and murder is gradually attained, although the original definition of each contained a term which was indefinite when it was first used. Thus, in the case of murder, where one man kills another, the presumption is that he did so maliciously, and so committed murder; but this presumption may be rebutted by showing that the act was done in self-defence, or under certain specified provocations, or by certain forms of negligence.

“If it be asked why, under these circumstances, the term malice should be retained, and why murder, for example, should not be defined to mean the killing of a man under any other circumstances than those specified, the answer is that the word is convenient, because it sums up in a significant way many distinct propositions, and also because it is possible, although improbable, that new cases may arise in which it would be necessary to use it in its natural sense. Suppose, for example, that in a wreck, fire, or other catastrophe, a bystander were to kill one person for the sake of saving another, the question whether or not this was murder would turn on the question whether it was or was not identical in principle with acts which the law has determined to be malicious or wicked. The general result of the use of the word malice, and of the doctrine that malice is an essential element of crime, is to throw upon persons who commit acts of a particular class the burden of proving that they were not done under the circumstances contemplated by the Legislature, but at the same time to permit them to give evidence to that effect.”

**Sect. 82.** *Act of a child under seven years of age.*—Nothing is an offence which is done by a child under seven years of age.

**Sect. 83.** *Act of a child above seven and under twelve years of age.*—Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

**Note.**—These two sections alter the English law only by reducing the age of mature understanding from fourteen to twelve years. By that law “an infant shall be *prima facie* deemed to be *doli incapax*, and to be unacquainted with guilt; yet this presumption will diminish with the advance of the offender’s years, and will depend upon the particular facts and circumstances of the case. The evidence of malice, however, which is to supply age, should be clear and strong beyond all doubt and contradiction.”—1 Russ. 7. An infant under the age of seven years cannot incur the guilt of felony.—*Marsh v. Loader*, 14 C.B.N.S. 535, 11 W.R. 784.

If a child, more than seven and under fourteen (under the Penal Code, under twelve), is indicted for a felony, it will be left to the jury to say whether the offence was committed by him, and if so, whether at the time of the commission of the offence the prisoner had a guilty knowledge that he or she was doing wrong; and the presumption of law is that a child of that age has not such guilty knowledge, unless the contrary is proved.—Per Littledale, J., in *Rex v. Owen*, 4 C. and P. 236. And this maturity of understanding must be affirmatively proved by the prosecution—*Reg. v. Vamplew*, 3 F. and F. 520—and must in most cases be inferred from surrounding circumstances. A boy of ten years old was convicted before Chief-Justice Willes of the murder of a girl of five years of age, but the Chief-Justice respited the execution, lest the punishment of such a child by death should be deemed to savour of cruelty; but the judges held that the circumstances of the case showed so much cunning that the boy ought to suffer as an example to others; and the convict would have been hanged, but for the interposition of the Secretary of State.—*R. v. York*, Fost. 70. In this case the judges to whom the case was referred said, “That there were so many circumstances stated in the report which were undoubtedly tokens of what Lord Hale calls ‘a mischievous discretion,’ that he was certainly a proper subject of capital punishment, and ought to suffer; for it would be of a very dangerous



consequence that children may commit such crimes with impunity."

In England, a child who, at the time of the commission of the offence of rape, is under fourteen, cannot, in point of law, be guilty of an assault with intent to commit a rape; and if he is under that age, no evidence is admissible to show that, in point of fact, he was physically able to commit that offence.—*Rex v. Phillips*, 8 C. and P. 736; and *Rex v. Groombridge*, 7 C. and P. 582. And in England it has been further held that a boy under fourteen years of age cannot be convicted of feloniously carnally knowing and abusing a girl under ten years of age, even though it was proved that he was arrived at the full state of puberty.—*Reg. v. Jordan*, 9 C. and P. 118; *Reg. v. Brimilow*, *ib.* 366. In the Penal Code there is no provision corresponding with the law as laid down in these two decisions, and also in 1 Hale, 631; and under the words of Sect. 83 a boy under the age of twelve might be convicted of rape, though of course the prosecution would have to show conclusively that the accused had attained the full state of puberty. There is, however, a case cited in 1 Morley's Dig. 190, sect. 636, where a boy only ten years old was convicted by the Futwa of rape on a girl only three years old, and the Court of N.A. viewed it as an attempt only, and punished it as a misdemeanour with one year's imprisonment. This decision, however, would be inconsistent under the law as laid down by the Penal Code; but for a more detailed discussion of this point, see the notes on Rape.

**Sect. 84.** *Act of a person of unsound mind.*—Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

**Note.**—The English law as to what constitutes a sufficient defence of insanity was laid down in *Reg. v. M'Naughten*, 10 Cl. and Fin. 200. "The jury ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and

quality of the act ; or, if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions, has generally been, whether the accused, at the time of doing the act, knew the difference between right and wrong ; which mode, though rarely if ever leading to any mistake with the jury, is not, as we conceive, so accurate when put generally, and in the abstract, as when put as to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused, solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction, whereas the law is administered upon the principle that every one must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable ; and the usual course, therefore, has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong ; and this course, we think, is correct, accompanied with such observations and explanations as the circumstances of each particular case may require."

The principles laid down in M'Naughten's case have been acted on in various other cases which it will be well to illustrate here. In *Rex v. Offord*, 5 C. and P. 168, Lord Lyndhurst held that to justify the acquittal of a prisoner indicted for murder, on the ground of insanity, the jury must be satisfied that he was incapable of judging between right and wrong ; and that at the time of committing the act, he did not consider it was an offence against the laws of God and nature. So, again, in *Reg. v. Higginson*, Maule, J., held that, to entitle a person to be acquitted on the ground of insanity, he must, at the time of the committing the offence, have been so insane that he did not know right from wrong. In *Reg. v. Townley*, 3 F. and F. 839, Martin, B., said that the question for the jury was, " Did the prisoner do the act under a delusion, believing it to be other than it was ? If he knew what he was doing, and that it was likely to cause death, and was contrary to the law of God and man, and that the law directed that persons who did such acts should be punished, he was guilty of

murder." In *Reg. v. Oxford*, 9 C. and P. 525, three judges, Lord Denman, C. J., Alderson, B., and Patteson, J., held that, if in answer to an indictment for treason, for attempting the life of the sovereign by shooting at her Majesty, the defence is insanity, the question for the jury will be, whether the prisoner was labouring under that species of insanity which satisfies them that he was quite unaware of the nature, character, and consequences of the act he was committing, or, in other words, whether he was really unconscious at the time he was committing the act that it was a crime. In *Reg. v. Burton*, 3 F. and F. 772, Wightman, J., explained to the jury that the delusions which indicate a defect of sanity such as will relieve a person from criminal responsibility, are delusions of the senses, or such as relate to facts or objects—not mere wrong notions or impressions of a moral nature; and the aberration must be mental, not moral, to affect the intellect of the individual. It is not enough that they show a diseased or depraved state of mind, or an aberration of the moral feelings, the sense of right and wrong being still not destroyed although it may be perverted; and the theory of moral insanity, or insanity of the moral feelings, while the sense of right and wrong remains, is not to be reconciled with the legal doctrine on the subject. A mere uncontrollable impulse of the mind, coexisting with the full possession of the faculties, will not warrant an acquittal on the ground of insanity, if at the time the prisoner committed the act he knew that what he was doing was wrong.—*Bramwell, B.*, in *Reg. v. Haynes*, 1 F. and F. 666; and *Parke, B.*, in *Reg. v. Barton*, 3 Cox C.C. 275.

If a person labours under an insane delusion as to an existing state of facts, "we think he must be considered in the same state as to responsibility as if the facts with respect to which the delusion exists were real. For example, if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man as he supposes in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."—*Reg. v. M'Naughten*, *ubi sup.*

On a trial for murder, the defence of insanity by the evidence showing a great amount of senseless extravagance and absurd eccentricity of conduct, coupled with habits of excessive intemperance, causing

fits of *delirium tremens*, the prisoner, however, not having been labouring under the effects of such a fit at the time of the act, and the circumstances showing sense and deliberation, and a perfect understanding of the nature of the act; it was held by Erle, C.J., that the evidence was not sufficient to support the defence, as it rather tended to show wilful excuses and extreme folly, than mental incapacity.—Reg. v. Leigh, 4 F. and F. 915. Where a person is in a state of mind in which she is liable to fits of madness, it is for the jury to consider whether the act done was done during such a fit, even although there is nothing before or after the act to indicate it, and though there is some evidence of design and malice.—Reg. v. Richards, 1 F. and F. 87. A married woman having killed her husband immediately after an apparent recovery from a disease (the result of child-birth) which caused a great loss of blood, and exhausted the vessels of the brain, and thus so weakened its power and tended to produce insane delusions of the senses, which, while suffering under such disease, she had complained of, and which by her own account had been received at the time of the act of homicide (although they were not such as would lead to it); it was held by Erle, C.J., that this was evidence from which a jury might properly find that she was not in such a state of mind at the time of the act as to know its nature or be accountable for it.—Reg. v. Law, 2 F. and F. 836. So, too, where a married woman, fondly attached to her children, and apparently most happy in her family, had poisoned two of them with some evidence of deliberation and design; but it appeared that there was insanity in her family; and from her demeanour before and after the act, which, although not wholly irrational, yet was strangely erratic and excited—and from recent antecedents, and the presence of certain exciting causes of insanity, and her own account of her sensations—the medical men were of opinion that she was labouring under actual cerebral disease, and that she was in a paroxysm of insanity at the time of the act; this was left by Wightman, J., to the jury as evidence on which they might rightly find her not guilty on the ground of insanity.—Reg. v. Vyse, 3 F. and F. 247. On an indictment for maliciously setting fire to a building, it is not necessary to prove actual ill-will in the prisoner towards the owner; and in order to justify a jury in acquitting a person on the ground of insanity, they must believe that he did not know right from wrong; but if they find that

the prisoner, when he did the act, was in such a state of mind that he was not conscious that the effect of it would be to injure any other person, this will amount to a general verdict of not guilty.—Per Crompton, J., in *Reg. v. Davies*, 1 F. and F. 69.

When the defence of insanity is set up, in order to warrant the jury in acquitting the prisoner, it must be proved affirmatively that he is insane; if that fact be left in doubt, and the commission of the crime charged in the indictment is proved, it is their duty to convict.—Per Rolfe, B., in *Reg. v. Stokes*, 3 C. and K. 185. So, too, in *Reg. v. Layton*, 4 Cox C.C. 149, the same learned judge ruled that, where a prisoner sets up insanity as a ground of defence, one cardinal rule is, that the burden of proving his innocence on that ground rests on the party accused. The question in such a case for the jury is, not whether the prisoner was of sound mind, but whether he has made out to their satisfaction that he was not of sound mind. The jury may come to a conclusion on this point from the conduct and acts of the accused shortly before and down to the commission of the alleged crime. Although insanity on one point—for instance, a delusion as to property—will not exempt a party from responsibility, the fact is not immaterial in considering his responsibility at another time and on another subject. The want, too, of motive for the commission of the crime, and its being committed under circumstances which render detection inevitable, are important points for the consideration of the jury, when coupled with the evidence of insanity on any particular point.

A party having been indicted for a misdemeanour, in uttering seditious words, and upon his arraignment refusing to plead, and showing symptoms of insanity, and an inquest being forthwith taken to try whether he was insane or not; it was held, first, that the jury might form their own judgment of the present state of the prisoner's mind from his demeanour while the inquest was being taken, and might thereupon find him to be insane, without any evidence being given as to his present state; and, secondly, that, upon his showing strong symptoms of insanity in court during the taking of the inquest, it became unnecessary to ask him whether he would cross-examine the witnesses, or would offer any remarks on the evidence.—*Reg. v. Goode*, 7 A. and E. 536.

A prisoner was indicted for shooting at his wife with intent to murder her, and was defended by counsel, who set up for him the

defence of insanity. The prisoner, however, objected to such a defence, asserting that he was not insane ; and he was allowed by the judge to suggest questions to be put by his lordship to the witnesses for the prosecution, to negative the supposition that he was insane ; and the judge also, at the request of the prisoner, allowed additional witnesses to be called on his behalf for the same purpose. They, however, failed in showing that the defence was an incorrect one—but, on the contrary, their evidence tended to establish it more clearly ; and the prisoner was acquitted on the ground of insanity.—Reg. v. Pearce, 9 C. and P. 667.

Where a jury is empannelled to try whether a prisoner is insane or not at the time when he is brought up to plead to an indictment, the counsel for the prosecution is to begin and call his witnesses to prove the sanity of the prisoner.—Reg. v. Davis, 6 Cox C.C. 326, 3 C. and K. 328. But where a jury is empannelled at the instance of the counsel for the prisoner, the proof of his insanity is incumbent on his counsel.—Reg. v. Turton, 6 Cox C.C. 385.

A class of cases may occasionally arise which will cause some difficulty—that is, where a prisoner is both deaf and dumb. Where a person is deaf only, or dumb only, there is generally some means of causing intelligent communications to pass from the court to him, and from him to the court ; but such is not always the case with a person who is both deaf and dumb. Two cases have occurred of this kind in modern practice in England—Reg. v. Dyson, 7 C. and P. 305, and Reg. v. Pritchard, *ib.* 303. In the latter case, Alderson, B., laid down the law to the jury in the following terms : “There are three points to be inquired into : first, whether the prisoner is mute of malice or not ; secondly, whether he can plead to the indictment or not ; thirdly, whether he is of sufficient intellect to comprehend the course of proceedings in the trial, so as to make a proper defence—to know that he might challenge any one of you to whom he may object—and to comprehend the details of the evidence which, in a case of this nature, must constitute a minute investigation. Upon this issue, if you think there is no certain mode of communicating the details of the trial to the prisoner, so that he can clearly understand them, and be able properly to make his defence to the charge, you ought to find that he is not of sane mind. It is not enough that he may have a general capacity of communicating on ordinary matters.” In both the

foregoing cases the jury found that the prisoner was not of sound mind, and the judge ordered the prisoner to be detained under 39 & 40 Geo. III. c. 94, s. 2. Treating such cases as cases of insanity, provision is made for them by the Criminal Procedure Code.

**Sect. 85.** *Act of a person incapable of judgment by reason of intoxication.*—Nothing is an offence which is done by a person who at the time of doing it is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

**Sect. 86.** *Offence requiring a particular intent committed by one who is intoxicated.*—In cases where an act is done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

**Note.**—By the English law drunkenness is not any excuse for crime—Pearson's Case, 2 Lewin, C.C. 144. Still, by the practice of the courts in England it is constantly held that a person who is intoxicated may be incapable of having any intention, and thus the nature of an offence may be considerably reduced, though intoxication does not render him entirely punishable for the act he may have committed while under the influence of liquor. Thus in a case of stabbing, where the prisoner used a deadly weapon, the fact that he was drunk does not at all alter the nature of the case; but if he had intemperately used an instrument not in its nature a deadly weapon, at a time when he was drunk, the fact of his being drunk might induce the jury to less strongly infer a malicious intent in him at the time.—Per Alderson, B., in *Rex v. Meakin*, 7 C. and P. 297. Again, Parke, B., says that if a man is drunk, this is no excuse for any crime he may commit; but where provocation by a blow has been given to a person who kills another with a weapon which he happens to have in his hand, the drunkenness of the prisoner may be considered on the question whether he was excited by passion or acted from malice; as, also, it may be on the question whether expressions used by the prisoner manifested a

deliberate purpose, or were the idle expression of a drunken man.—*Rex v. Thomas*, 7 C. and P. 817. In a third case, *Crowder, J.*, laid it down that though drunkenness is no excuse for crime, it may be taken into account by the jury when considering the motive or intent of a person acting under its influence.—*Reg. v. Gamlen*, 1 F. and F. 90. Where, on a trial of an indictment for an attempt to commit suicide, it appeared that the prisoner was, at the time of the commission of the alleged offence, so drunk that she did not know what she was doing, it was held that this negatived the intent to commit suicide.—*Reg. v. Moore*, 3 C. and K. 319, 16 Jur. 750.

This being the English law, how far do these sections alter it? The 85th is really an enunciation of the general principle, that drunkenness is no excuse for crime—with the further enunciation, that if a person is forcibly, against his will, put in a position in which he has no control over his actions, he is not responsible for them. The 86th section thus provides that a drunken man committing an offence shall be assumed to have the same knowledge and intention as he would have had if sober; it makes a man who gets intoxicated his own insurer against the possible results of his drunkenness. If the law infers a certain knowledge or intention in a man who does certain acts when he is sober, the same knowledge and intention will be attributed to a drunken man who does those acts. Thus a man who stabs another with a dagger, or shoots him with a pistol, is presumed in law to intend to kill him; and under this section, whether the accused be drunk or sober, although drunkenness does not excuse, it does not aggravate an offence.—*Reg. v. Zulfukar Khan*, 8 B.L.R. App. 21, and 16 W.R. Crim. 36. And where an act may be innocent or may be guilty—as, for instance, the passing of a forged note—the law does not attribute any greater knowledge or intention to a drunken than to a sober man; and the prosecution must prove the intent by surrounding circumstances, as in ordinary cases, and the court or jury may take the fact of the accused having been drunk at the time he committed the act into account in forming a conclusion upon his innocence or guilt. The same remark would apply to acts, the heinousness of which would differ according to the intention with which they were done. So in a case similar to that of *Reg. v. Moore*, *supra*, it might be a question whether the act alleged was an attempt at suicide, or whether it was not even an act of the prisoner, but an accident or



misadventure arising from her having been utterly incapable of taking care of herself.

**Sect. 87.** *Act not intended to cause death, &c., done by consent.*—Nothing which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

*Illustration.*

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

**Note.**—Grievous hurt is by Sect. 320 limited to the following kinds:—Emasculation; permanent privation of the sight of either eye, or the hearing of either ear; privation of any member or joint; destruction or permanent impairing of the powers of any member or joint; permanent disfiguration of the head or face; fracture or dislocation of a bone or tooth; any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits: and by the joint operation of Sects. 321 and 322, a person is said voluntarily to cause grievous hurt who does any act with the intention of thereby causing grievous hurt to any person, or *with the knowledge that he is likely thereby to cause grievous hurt* to any person, and does thereby cause grievous hurt to any person. Therefore it will appear that this section is practically in accord with the English law as respects games and pastimes. In both cases the probability of grievous hurt being caused seems to have been the practical limit. A tilt or tournament, although the martial diversion of our ancestors, was nevertheless an unlawful act; and so are boxing or prize-fighting and sword-playing, the succeeding amusements of their posterity from time to time.—Reg. v. Brown, Car. and

M. 314. And the unlawfulness extends to all persons assembled for the purpose of witnessing those sports.—Reg. v. Perkins, 4 C. and P. 537; Reg. v. Hargrave, 5 C. and P. 170; Reg. v. Murphy, 6 C. and P. 103. Therefore, if a knight in the former case, or a gladiator or boxer in the latter, be killed, such killing is manslaughter.—4 Bl. Com. 183. Mr Mayne seems to think there is just a doubt whether prize-fighting would be allowed by the provisions of this section, on the ground of want of probability that the fight would cause either death or grievous hurt; but does not experience teach the probability of permanent disfiguration of the head or face, of a fracture or dislocation of a bone or tooth, of severe bodily pain or inability to follow one's ordinary occupation for the space of twenty days? If so, then prize-fighting does not come within the exception allowed by this section; and is not justifiable, independently of any prohibition which might arise from other terms of Sect. 91, in consequence of a prize-fight involving a breach of the peace. Fencing with naked swords is forbidden, but with foils is allowable so long as the buttons are at the end of the foils; boxing with gloves is also allowable, and many other pastimes, of which in the ordinary course of affairs it is not likely that death or grievous hurt will be the result. Therefore in England it is a good defence to prove that a battery was merely an amicable contest—as, that one wrestled with another for a wager.—Com. Dig. Pleader, 3 M. 18. So, also, that it happened by accident whilst the defendant was engaged in some sport or game which was neither unlawful nor dangerous, is a good defence.

The consent given, it should be observed, must be of a person above eighteen years of age; and therefore, by the terms of the section, there is no permission for any game in which there is any degree of danger between persons under that age. Therefore two boys of sixteen fencing with foils or single-sticks, or boxing with gloves, would not by it be protected. Further, the consent given being to take a certain kind of risk, the amount of risk must not be increased, nor the kind thereof changed; and this involves the necessity that both parties should strictly observe all the rules of the game or pastime in which they are engaged, though, of course, it is quite competent to either party in the course of the game to take upon himself a greater amount of risk than he agreed to at first. And to this effect is it ruled in East's 'Pleas of the Crown,' vol. i. p.

269. "In cases of friendly contests with weapons, which, though not of a deadly nature, may yet breed danger, there should be due warning given that each party may start upon equal terms; for if two were engaged to play at cudgels, and the one made a blow at the other, likely to hurt, before he was upon his guard, and without warning, and death ensued, the want of due and friendly warning would cause such act to amount to manslaughter, but not murder, because the intent was not malicious." The other questions connected with consent will be discussed under Sect. 90.

**Sect. 88.** *Act not intended to cause death, done by consent in good faith for the benefit of a Person.*—Nothing which is not intended to cause death is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

*Illustration.*

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending in good faith Z's benefit, performs that operation on Z with Z's consent. A has committed no offence.

**Sect. 89.** *Act done in good faith for the benefit of a Child, &c., by or by consent of Guardian.*—Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by, or by consent, either express or implied, of the guardian, or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person: Provided—

*First,* That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

*Secondly,* That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

*Thirdly,* That this exception shall not extend to the voluntary

causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

*Fourthly*, That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

*Illustration.*

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as the object was the cure of the child.

**Note.**—Sect. 92 ought to follow these two sections in the Code, because it applies to the same acts as enunciated here, when those acts are done without the patient's consent, when the circumstances are such that it is impossible for him to signify his consent, or if he is incapable of giving consent, and has no guardian or other person in lawful charge of him, from whom it is possible to obtain consent in time for the thing to be done with benefit. The remarks and illustrations to these two sections will therefore equally apply to Sect. 92, and will not be repeated there.

First, it will be necessary to import the explanation attached to Sect. 92, which is, that "mere pecuniary benefit is not benefit within the meaning of Sects. 88, 89, and 92;" the benefit to accrue must be some physical benefit, the alleviation of some disease or diseased or disorganised condition of some part or member of the body. Therefore, if a man desiring to enter a society of eunuchs induces another to castrate him, the operator is liable for the consequences of the emasculation; and it has been held in the case of *Reg. v. Baboolun Hijrah*, 5 W.R. Crim. 7, that where a man of full age (over eighteen years) voluntarily submits himself, for the cure of no diseased state, to emasculation, performed neither by a skilful hand nor in the least dangerous way, and dies from the injury, the persons concerned in the act are guilty of culpable homicide, although not only did they not know that emasculation was unlawful, but believed a man might cause himself to be emasculated if he pleased. Mr Mayne relates "a strange case, in which a man who had a life

estate in himself entailed upon his children, with reversion to himself in fee, wanted to raise a loan upon the security of his estate. He had no children; but as it was possible he might have issue, the security was rejected. He hit upon the strange idea of having himself castrated in order to make possibility of issue extinct!" It need hardly be said that his legal advisers did not sanction this extraordinary device. In some parts of India, however, where eunuchs yet abound, the practice of emasculation of children, and even of adults, still exists for the purpose of obtaining the benefit (?) of admission to the caste; and out of such a desire arose the case just before quoted. But this kind of cases ought to diminish now that the class of persons by whom they are committed has been placed under special supervision.

The cases to which these exceptions really apply are those which are met with in medical practice, where dangerous operations are performed in the hope of benefiting the patient, or where life is jeopardised for the sake of saving life, and where pain is caused in the hope of relieving pain. Others may arise, but they are of such unfrequent occurrence that it is scarcely possible to discuss them profitably at any length; and, in fact, after applying the principles which have been laid down under the English law as to the liability of medical practitioners, nearly all that can be said is that you must make the best of a bad job, and act for the best under the particular circumstances of each case.

The all-important part of these sections is the provision that whatever is done should be done in "good faith," that is, with "due care and attention," and due care and attention cannot be exercised without competent knowledge and skill; therefore, the principles on which these sections will be interpreted may be learnt from a study of the decisions on the liability of medical practitioners for want of skill in the exercise of their profession. First, In civil actions, it has been ruled that every person who enters into a learned profession undertakes to bring to the exercise of it a reasonable degree of care and skill. He does not, if he is an attorney, undertake, at all events, to gain the cause; nor does a surgeon undertake that he will perform a cure; nor does the latter undertake to use the highest possible degree of skill, as there may be persons of higher education and greater advantages than himself; but he undertakes to bring a fair, reasonable, and competent

degree of skill ; and in an action against him by a patient, the question for the jury is, whether the injury complained of must be referred to the want of a proper degree of skill and care in the defendant or not.—*Per Tindal, C.J.*, in *Lanphier v. Phipos*, 8 C. and P. 475. So *Erle, C.J.*, in *Rich v. Pierpont*, 3 F. and F. 35, has ruled that to render a medical man liable for negligence, or want of due care or skill, it is not enough that there has been a less degree of skill than some other medical man might have shown, or a less degree of care than even he himself might have bestowed—nor is it enough that he himself acknowledged some degree of want of care ; there must have been a want of competent and ordinary care and skill, and to such a degree as to have led to a bad result. And in discussing the question of want of skill, no distinction of any kind will be made between a duly qualified practitioner and one who practises without a legal qualification.—See the cases of *Ruddock v. Lowe*, 4 F. and F. 519 ; and *Jones v. Fay*, 4 F. and F. 525. Secondly, In criminal charges it has been held that any person, whether a licensed medical practitioner or not, who deals with the life or health of any of her Majesty's subjects, is bound to have competent skill, and is bound to treat his or her patients with care, attention, and assiduity ; and if a patient dies for want of either, the person is guilty of manslaughter.—*Rex v. Spiller*, 5 C. and P. 333 ; see also *Rex v. Simpson*, 1 Lewin, C.C. 172 ; and *Rex v. Ferguson*, 1 Lewin, C.C. 181. But if a person, *bona fide* and honestly exercising his best skill to cure a patient, performs an operation which causes the patient's death, he is not guilty of manslaughter ; and it makes no difference whether such person is a regular surgeon or not, or whether he has had a regular medical education or not.—*Rex v. Van Butchell*, 3 C. and P. 629 ; see also the case of *Rex v. St. John Long*, 4 C. and P. 398, and *ib.* 423. If a medical man, though lawfully qualified as such, causes the death of a person by the grossly unskilful or the grossly incautious use of a dangerous instrument, he is guilty of manslaughter.—*Reg. v. Spilling*, 2 M. and Rob. 107. So, too, where a person, grossly ignorant of medicine, administers a dangerous remedy to one labouring under a disease, proper medical assistance being at the time procurable, and that dangerous remedy causes death, the person so administering it is guilty of manslaughter.—*Rex v. Webb*, 1 M. and Rob. 405 ; and 2 Lewin, C.C. 196 ; and the same

doctrine has been laid down by Willes, J., in the case of *Reg. v. Markuss*, 4 F. and F. 356, where it was held that if an unskilled practitioner ventures to prescribe dangerous medicines, of the use of which he is ignorant, that is culpable rashness, for which he will be held liable. In three cases, the law has been laid down a little less strictly than in those just referred to, though the general principle acted on has been the same. In the case of *Reg. v. Crook*, 1 F. and F. 521, and in that of *Reg. v. Crick*, *ib.* 519, it was held that the administration by an ignorant person of a dangerous medicine—in the one case corrosive sublimate, and in the other lobelia—was evidence on which the jury were to decide whether the prisoner had acted so rashly and carelessly as to cause death. In the former case, the prisoner, a blacksmith, applied the corrosive sublimate to a cancer, and thereby caused the death of the patient, and the accused was convicted of manslaughter: in the latter, a herb-doctor administered lobelia to a child, and the child got better; but the mother, observing this, continued the medicine, without consulting the herb-doctor again, and the child died; but the accused was acquitted. The third case is that of *Rex v. Williamson*, 3 C. and P. 635, where Lord Ellenborough, C.J., held that a person in the habit of acting as man-midwife, who tore away part of the prolapsed uterus of one of his patients, supposing it to be a part of the placenta, by reason of which the patient died, cannot be convicted of manslaughter, unless the jury consider from the facts in evidence that he is guilty of criminal misconduct, arising either from the grossest ignorance or from the most criminal inattention. In all these last three cases it will be observed that the acts causing the death were left to the jury as a piece of evidence from which they could infer ignorance or inattention or misconduct, but not as in themselves constituting legal negligence.

**Sect. 90.** *Consent known to be given under fear, &c.*—A consent is not such a consent as is intended by any section of the Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception. Or,

*Consent of a Child or Person of unsound mind.*—If the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to

which he gives his consent ; or, unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

**Note.**—Under the former half of this section, the question arises as to what kind of injury it is the fear of which renders nugatory a consent given. Clearly, it must be a fear of an injury other than that which it is supposed will be the result if a proposed course of treatment is adopted—an injury other than that which may be the natural result of the state the patient is in. It must, in fact, be the consequence of a threat of injury to be *done*, external to and unconnected with the injury which may be *suffered*. So, too, although it is not so stated, it is surmised that there must be fear of injury to the person, and not to property ; for the consent to be given is apparently a part of a contract, and, under the English law, an agreement made under duress of goods, or threat of damage, legal or actual, to goods, is not void.—*Skeate v. Beale*, 11 A. and E. 983 ; *Wakefield v. Newton*, 6 Q.B. 276 ; *Kearns v. Durrell*, 6 C.B. 596, and 18 L.J.N.S.C.P. 28.

The interpretation of the words “misconception of fact” must be carefully undertaken ; for it is evident from the sections which this controls that they cannot mean that the person consenting believes the facts to be different from what they really are, but that, by a *wilful misrepresentation*, he believes the facts are different from what the person representing them *believes* them to be, otherwise a medical man, honestly representing facts according to his skill and belief, might find himself charged as a criminal by reason of a mistake of judgment ; and the facts misrepresented must be in connection with the state of the patient and the action to be taken.

Further, the person about to act, in order to come within the terms of this section, must be aware at the time of acting that the consent was given under circumstances which nullify it.

**Sect. 91.** *Acts which are offences independently of harm caused.*—The exceptions in Sects. 87, 88, and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

*Illustration.*

Causing miscarriages (unless caused in good faith for the pur-



pose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence "by reason of such harm;" and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

**Sect. 92.** *Act done in good faith for the benefit of a Person without consent.*—Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit. Provided—

*First,* That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

*Secondly,* That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

*Thirdly,* That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

*Fourthly,* That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

#### *Illustrations.*

- (a) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.
- (b) Z is carried off by a tiger. A fires at the tiger, knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.
- (c) A, a surgeon, sees a child suffer an accident which is likely to

prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

- (d) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but, not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

*Explanation.*—Mere pecuniary benefit is not benefit within the meaning of Sects. 88, 89, and 92.

**Sect. 93.** *Communication made in good faith.*—No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

*Illustration.*

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

**Sect. 94.** *Act to which a Person is compelled by threats.*—Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence; provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

*Explanation 1.*—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

*Explanation 2.*—A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law—for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it—is entitled to the benefit of this exception.

**Note.**—To obtain the benefit of this section, a prisoner must show that the act was done under fear of instant death; therefore, persons giving false evidence under the alleged influence of a threat are not protected by this section.—Reg. v. Sonoo, 10 W.R. Crim. 48.

**Sect. 95.** *Act causing slight harm.*—Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

**Note.**—The taking of almost valueless pods from a tree standing upon Government waste ground comes within this section, and so does not amount to theft.—Reg. v. Kasya bin Ravji, 5 Bom. H.C.R.C.C. 35.

**Sect. 96.** *Nothing done in private defence is an offence.*—Nothing is an offence which is done in the exercise of the right of private defence.

**Sect. 97.** *Right of private defence of the body and of property.*—Every person has a right, subject to the restrictions contained in Sect. 99, to defend—

*First,* His own body, and the body of any other person, against any offence affecting the human body;

*Secondly,* The property, whether moveable or immoveable, of himself or of any other person, against an act which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass.

**Sect. 98.** *Right of private defence against the act of a Person of unsound mind, &c.*—When an act which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

*Illustrations.*

- (a) Z, under the influence of madness, attempts to kill A ; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.
- (b) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a housebreaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

**Sect. 99.** *Acts against which there is no right of Private Defence.*

—*First*, There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

*Secondly*, There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

*Thirdly*, There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

*Fourthly, Extent to which the Right may be exercised.*—The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

*Explanation 1.*—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

*Explanation 2.*—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction ; or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority, if demanded.

**Sect. 100.** *When Right of Defence of Body extends to causing*

*Death.*—The right of private defence of the body extends under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated—namely,

*First,* Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault.

*Secondly,* Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault.

*Thirdly,* An assault with the intention of committing rape.

*Fourthly,* An assault with the intention of gratifying unnatural lust.

*Fifthly,* An assault with the intention of kidnapping or abducting.

*Sixthly,* An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

**Sect. 101.** *When such Right extends to causing any harm other than Death.*—If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in Sect. 99, to the voluntary causing to the assailant of any harm other than death.

**Sect. 102.** *Commencement, &c., of the Right.*—The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

**Sect. 103.** *When the Right of Private Defence of Property extends to causing Death.*—The right of private defence of property extends, under the restrictions mentioned in Sect. 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated—namely,

*First,* Robbery.

*Secondly*, Housebreaking by night.

*Thirdly*, Mischief by fire committed on any building, tent, or vessel, which building, tent, or vessel is used as a human dwelling, or as a place for the custody of property.

*Fourthly*, Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

**Sect. 104.** *When such Right extends to causing any harm other than Death.*—If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in Sect. 99, to the voluntary causing to the wrong-doer of any harm other than death.

**Note.**—Where A trespassed into B's house, with the object of having intercourse with B's wife, and B and his friend C severely beat A. B was held justified under this section and Sect. 96 in so acting, and C was also acquitted, as having aided in the commission of no offence.—Reg. v. Dhaumun Zeli, xx. W.R. Crim. 36.

**Sect. 105.** *Commencement, &c., of Right.*—*First*, The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

*Secondly*, The right of private defence of property against theft continues till the offender has effected his retreat with the property or the assistance of the public authorities is obtained, or the property has been recovered.

*Thirdly*, The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint, or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

*Fourthly*, The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

*Fifthly*, The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such housebreaking continues.

**Sect. 106.** *Right of Private Defence when there is risk of harm to an innocent Person.*—If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

*Illustration.*

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children, who are mingled with the mob. A commits no offence, if by so firing, he harms any of the children.

**Note.**—On these sections the following decisions have been given :—In the first place, it has been held that Sect. 99 restricts all the following sections, and causes them not to extend to the infliction of more harm than is absolutely necessary for the purposes of self-defence.—*Reg. v. Dhununjai Poly*, 14 W.R. Crim. 68. An officer, subordinate to an officer in charge of a police station, who was deputed by the latter to make an inquiry under Sect. 135 of the Criminal Procedure Code, *infra*, attempted, without a search-warrant, to enter a house in search of property alleged to have been stolen, and was obstructed and resisted. It was held that, even though the police officer was not strictly justified in searching the house, without a warrant, the person obstructing and resisting could not set up the illegality of the officer's proceeding as a justification to his obstruction, as it was not shown that that officer was acting otherwise than in good faith and without malice; and he was therefore within the exception contained in the first clause of Sect. 99.—*Reg. v. Vyankatray Shrinivas*, 7 Bombay H.C. Rep. C.C. 50.

Under Sect. 100 it has been decided that the right of private defence of the body and property is not exceeded by a person who is attacked by another with a spear, and who strikes a blow with a *lattee*; and such right extends to the taking of life where grievous hurt is reasonably apprehended.—*Reg. v. Moizudin*, 11 W.R. Crim. 11; *Reg. v. Ram Lall Sing*, 22 W.R. 50.

In a case under Sect. 102 the following facts appeared in evidence: The accused and the deceased, with a third person, met one day at a liquor-shop, and there drank together. They afterwards walked together, the third person being just behind the other two. Whilst so walking together, an altercation took place in respect of the deceased having, as alleged by the prisoner, caused the death of the prisoner's four children by incantations. According to the prisoner's account, the deceased admitted that he had done so, and added that he would also bring about the death of the prisoner; in short, that he would not allow him to leave the jungle alive, but would cause him to be taken and eaten by a tiger. Thereupon the prisoner stated that he killed the deceased with several blows of a heavy *lattee*. It was held, with reference to the provisions of Sects. 97, 99, and 102, that the accused had no reasonable apprehension of danger to himself from the threats of the deceased, whom he killed; and that therefore the right of private defence of the body did not arise, and the case was not taken out of the category of murder by reason of the second exception to Sect. 300.—*Rex v. Gobadur Bhooyan*, 13 W.R. Crim. 55.

Under Sects. 103 and 104 it has been ruled that a party in possession of land is legally entitled to defend his possession against another person seeking to eject him by force.—*Reg. v. Tulsi Sing*, 2 Ben. L.R.A. Cr. J. 16, and 10 W.R. Crim. 64. The prisoners in another case, in resisting a sudden attack made upon them by certain persons for the purpose of cutting their crops, and when they had no time to complain to the police, inflicted a wound upon one of the other party with a bamboo, from the effects of which the man afterwards died, and were convicted by the sessions judge under Sects. 148 and 304; but the High Court held that the force used and the injuries inflicted were not such as to exceed the right of private defence of property, and directed an acquittal.—*Reg. v. Guru Churn Chung*, 6 Ben. L.R. App. 9, and 14 W.R. Crim. 69. Where the accused, whose property had frequently been stolen, went, armed with a *lattee*, to watch his property, and with the *lattee* struck a thief, who died from the effects of the blow, it was held, having regard to the nature of the injuries inflicted, and the subsequent conduct of the accused, that the case did not fall within the 4th clause of Sect. 97, and that the prisoner was not guilty of culpable homicide, not amounting to murder, being protected by



Sects. 97 and 104, he not having exceeded the legal right of private defence of property.—*Reg. v. Mokee*, 12 W.R. Crim. 15; see also *Reg. v. Goberdhun Pari*, 14 W.R. Crim. 75. But where A trespassed on the lands of B, whose servants seized and confined A till the following morning, when B gave information to the police, it was held that the conduct of B and his servants in thus confining A could not be excused on the ground that they were exercising the right of private defence of property.—*Shurufodeen v. Kasinath*, 13 W.R. Crim. 65.

Where the accused pursued a thief and killed him after the house-trespass ceased, it was held that the act did not fall under Exception 2 to Sect. 300, the right of private defence of property only continuing under this clause so long as the house-trespass continues.—*Reg. v. Balakee Jolahed*, 10 W.R. Crim. 9.

*Duties of Judge in charging Jury.*—When a prisoner is on his trial by a jury upon a charge of murder, it is the duty of the judge to point out to the jury accurately the distinction between murder and culpable homicide not amounting to murder, and to direct their attention to the evidence, and leave them to find the facts and to say (under his direction as to the law) of what offence the prisoner has been guilty.—*Reg. v. Shunishere Beg*, 9 W.R. Crim. 51. In charging a jury in a case of culpable homicide, not amounting to murder, the judge should call upon the jury to state what kind of culpable homicide they consider the prisoner to have committed, as Sect. 304 prescribes different punishments for different classes of that offence; and, in the absence of any such finding by the jury, the High Court will hold that the conviction was for the lighter description of that offence.—*Reg. v. Ameer Khan*, 12 W.R. Crim. 35, and 6 Ben. L.R. App. 87, n.: *i.e.*, the judge should ask the jury whether the prisoner had done the act causing death with the intention of causing death, or such bodily injury as was likely to cause death; or whether he had done it simply with the knowledge that it was likely to cause death, but without either of the foregoing intentions.—*Reg. v. Kali Charn Dass*, 6 Ben. L.R. App. 86, and 15 W.R. Crim. 17.

Under Sect. 302 a judge was held to have exercised a right discretion in not passing a sentence of death for murder where the dead body of the person murdered had not been found.—*Reg. v. Budduroodeen*, 11 W.R. Crim. 20.

## CHAPTER V.

## ABETMENT.

**Chap. V. Sect. 107.** *Abetment of a thing.*—A person abets the doing of a thing, who—

*First*, Instigates any person to do that thing; or,

*Secondly*, Engages with one or more persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

*Thirdly*, Intentionally aids, by an act or illegal omission, the doing of that thing.

*Explanation 1.*—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

*Illustration.*

A, a public officer, is authorised by a warrant from a court of justice to apprehend Z. B, knowing that fact, and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigating the apprehension of C.

*Explanation 2.*—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

**Note.**—By English law, where two or more persons are to be brought to justice for one and the same felony, they are considered

in the light either—(1) Of principals in the first degree ; (2) Of principals in the second degree ; (3) Of accessories before the fact ; (4) Of accessories after the fact. Accessories after the fact are those who, knowing a felony to have been committed by another, receive, relieve, comfort, or assist the felon (1 Hale, 618 ; 1 Russ. on Crimes, 64).—See Sects. 130, 136, 157, 212, 216. The Indian Penal Code does not make this distinction between principals of the first and second degree and accessories before the fact, but provides generally for criminal offences under the two heads of—(1) Principals (see Sects. 34 and 38) ; and (2) Abettors. Sect. 114 provides for the punishment of those who, under English law, would be principals in the second degree.

The offence of abetment by instigation depends upon the intention of the person who abets, and not upon the act which is actually done by the person he abets.—Reg. v. Imamdi Bhooyah, 21 W.R. Crim. 8. A head-constable, knowing that certain persons are likely to be tortured, and, keeping out of the way, is guilty of abetment under Explanation 2 of this section.—Reg. v. Kali Churn Gangooly, 21 W.R. Crim. 11.

A prisoner, who consented to form one of a party who committed theft, and withdrew from his agreement, but was present at the commission of theft, does not “conspire” within Clause 2 of this section, but is guilty of abetment under Clause 3 and Sect. 109.—Reg. v. Bhoodhun Mooshur, 8 W.R. Crim. 78.

Where, of several persons constituting an unlawful assembly, some only were armed with sticks, and A, one of them, was not so armed, but picked up a stick and used it, B, the master of A, who gave a general order to beat, was held guilty of abetting the assault made by A.—Reg. v. Rasoo Koollah, 12 W.R. Crim. 51.

A gave a dao to B, who had declared his intention of coercing C against whom he was acting. B inflicted grievous hurt on C with this dao. A was held guilty of abetment under Explanation 2 of this section.—Reg. v. Eshan Meah, 12 W.R. Crim. 52. In a charge of abetment, the section creating the principal offence, the particular section of this chapter under which the case falls, and the circumstances which bring it under that section, must all be stated.—1 W.R.C.L. 9, 2 W.R.C.L. 1, 8.

As to the effect of subsequent knowledge of an offence, see Reg. v. Shumeerudeen, 2 W.R. Crim. 40.

Mere non-feasance will not generally amount to an illegal omission (1 Russ. 91); but circumstances may exist where mere non-feasance towards a child of tender years amounts to an illegal omission. So a refusal, or neglect to provide sufficient food or other necessaries for an infant of tender years, unable to provide for or take care of itself, by a party obliged by duty or contract to provide for it, amounts to an illegal omission.—1 Russ. 80.

Giving or fabricating false evidence with intent to procure conviction of a capital offence, is expressly provided for by Sect. 194; see, too, Sect. 195.

The offence of abetment under the Penal Code is a substantive offence. The conviction of an abettor is, therefore, in no way dependent on the conviction of the principal.—*R. v. Marutitada*, 1 In. L.R. Bom. 15.

**Sect. 108. Abettor.**—A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

*Explanation 1.*—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

*Explanation 2.*—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisitè to constitute the offence should be caused.

#### *Illustrations.*

- (a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.
- (b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

*Explanation 3.*—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge.

#### *Illustrations.*

- (a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence if committed by a

person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

- (b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act, and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.
- (c) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.
- (d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

*Explanation 4.*—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

*Illustration.*

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment of murder; and as A instigated B to commit the offence, A is also liable to the same punishment.

*Explanation 5.*—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert

the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

*Illustration.*

A consents with B a plan of poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section, and is liable to the punishment for murder.

**Note.**—The definition of the word “offence” is to be found in Sect. 40.

**Sect. 109.** *Punishment of Abetment if the act abetted is committed.*—Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for this offence.

*Explanation.*—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

*Illustrations.*

- (a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in Sect. 161.
- (b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.
- (c) A and B conspire to poison Z. A, in pursuance of the con-

piracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy administers the poison to Z in A's absence and thereby causes Z's death. Here, B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

**Note.**—*Offences under this Chapter are triable by the act by which the offence abetted is triable. A warrant or summons should ordinarily issue in the first instance, according as a warrant or summons may issue for the offence abetted. For offences coming under Sects. 115, 118, and 119 (if the offence concealed be punishable with death or transportation for life), defendants are not bailable; for other offences defendants are bailable or not as the offence abetted is bailable or not.*

### Charges.

*Where Principal is charged in same indictment.*—That you, the said A B, did, on or about the      day of      , at      , abet the commission of      by the said C D, which was committed in consequence of the said abetment, and that you have thereby committed an offence punishable under Sect. 109 of the Indian Penal Code, and within, &c.

*Where Principal is not charged in the same indictment.*—That one A B (or some person unknown) did, on the      day of      , commit      , and that you, the said C D, abetted the said A B (or person unknown) in the commission of      , which was committed in consequence of the said abetment, and that you have thereby committed an offence punishable under Sect. 109 of the Indian Penal Code, and within, &c.

In the case of *Reg. v. Pestanji Dinsha* (10 Bom. H.C.R. 75), it was argued that the abetment of murder by sorcery or other impossible means is not an offence under the Penal Code. The question was left in doubt, the court finding it unnecessary to come to a decision on the point. Counsel for the Crown contended that abetment to murder by sorcery is an offence, because death may be caused indirectly by sorcery; and that, even if that be not so, intention to kill, followed by an overt act of instigation, constitutes an abetment of murder under Sect. 109 of the Indian Penal Code; and in such a case as that of A impressing B strongly

with his desire for the death of C, and attempting to influence B to murder C by sorcery, and the murder thereon of C by the hand of B, through the agency of some possible means, it seems impossible, without a quibble, to hold that A is not guilty of having *instigated* the murder of C. C has been killed on account of A's inciting B to kill him; and B, in substituting possible means of death for the impossible means suggested by A, must have supposed, by inference, that though he thereby departed in some measure from the instructions given by A, still, that so long as he followed out the main object, the murder of C, he was acting as the agent for carrying out C's expressed wish.—See, too, Sect. 111. Upon an indictment on 43 Geo. III. c. 58, s. 2, Lawrence, J., said: "It is immaterial whether the shrub was savin or not, or whether it was capable of procuring abortion, or even whether the woman was actually with child. If the prisoner believed at the time that it would procure abortion, and administered it with that intent, the case is within the statute, and he is guilty of the offence laid to his charge."—3 Camp. Rep. 73, 76. Sect. 40, as it originally stood, defined an "offence" as "a thing punishable under this Code;" and by the amending Act, xxvii. of 1870, the words (among others), "or under any special or local law as hereinafter defined," were added. The definition given by Sect. 41 of "special law" is "a law applicable to a particular subject." The question on this definition arises whether special English statutes,—for instance, those providing generally for the trial and punishment of persons committing offences upon the high seas—*e.g.*, such as the Merchant Shipping Act and the Acts passed in amendment of it,—should be considered "special laws" as defined by Sect. 41, so that abetment of offences under such statutes would be punishable under the Penal Code.—See *Reg. v. Elmstone*, 7 Bom. H.C.R.C.C. 118, decided before the passing of the Act xxvii. of 1870.

Though the Indian Legislature may not have power to legislate for a principal offence committed out of British India, still, it may be, it has power to legislate for the abetment in India of such an offence; and Sects. 121, 125, and 236 of the Penal Code assume there is such power.—*Reg. v. Elmstone*, 7 Bom. H.C.R.C.C. 119. The fact of every abettor, too, being liable to be indicted, tried, and punished for abetment as a substantive offence, seems to support the opinion that the Indian Legislature has the above-mentioned power.



**Sect. 110.** *Punishment of Abetment if the Person abetted does the act with a different intention from that of the Abettor.*—Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

**Note.**

*Charge.*

That you, A B, did, on or about the \_\_\_\_\_ day of \_\_\_\_\_ instigate and abet one C D to \_\_\_\_\_, well knowing that \_\_\_\_\_ would be the probable result of [such act on the part of C D]; and that the said C D did, in consequence of such abetment [here state the commission of the offence by C D, and the result following, known by A B to be probable]; and that you, the said A B, have thereby committed an offence under Sect. 110 of the Indian Penal Code, and within, &c.

**Sect. 111.** *Liability of Abettor when a different act is done.*—When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it; provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

*Illustrations.*

- (a) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner, and to the same extent, as if he had instigated the child to put the poison into the food of Y.
- (b) A instigates B to burn Z's house. B sets fire to the house, and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not

guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence to the burning.

- (c) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

**Note.**

*Charge.*

That you the said B, on or about the day of \_\_\_\_\_ did abet one A to \_\_\_\_\_, and that the said A did, in consequence of such abetment [here state the different offence committed from that abetted], such \_\_\_\_\_ being a probable consequence of the said abetment, and having been committed in consequence of such abetment, you, the said B, have thereby committed an offence [or offences, see Sect. 112] punishable under Sects. 111 and \_\_\_\_\_ of the Indian Penal Code, and within, &c.

**Sect. 112.** *Cumulative punishment for act abetted and for act done.*—If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

*Illustration.*

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress, and the offence of voluntarily causing grievous hurt, B is liable to punishment for both offences; and if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

**Sect. 113.** *Liability of Abettor for an effect different from that intended.*—When an act is abetted with the intention on the part of

the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

*Illustration.*

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

**Sect. 114.** *Abettor present when Offence is committed.*—Whenever any person who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

**Note.**—This section simply provides for the punishment of what the English law calls principals in the second degree. A person present abetting an offence is to be *deemed* to have committed the offence, though he does not in fact do so any more than a principal in the second degree does. Hence “all who are present aiding and assisting a man to commit a rape are principal offenders in the second degree, whether they be men or women”—1 Russ. 905 ; and hence Lord Audley (3 Howell’s State Trials, 401) was convicted as a principal of a rape on his own wife, because he aided another to ravish her. There are several modes of abetment defined in the Penal Code. One is instigating another to commit an offence. If A instigates B to murder Z, he commits abetment ; if absent, he is punishable as an abettor ; and if the offence is committed, then under Sect. 109 ; if present, he is by this section to be *deemed* to have committed the offence, and is punishable as a principal.

Another mode of abetment is by intentionally aiding, by any act or illegal omission, the doing of an offence. A aids B to murder Z. If absent, he is punishable as an abettor, and may be liable under Sect. 109 ; if present, then he is to be *deemed* as much to have committed the offence as if he had struck the fatal blow. The meaning

of this section is, that if the nature of the act done constitutes abetment, then, if present, the abettor is to be deemed to have committed the offence, though, in point of fact, another actually committed it.—4 Mad. H.C. Rulings, 8th March 1869, xxxvii. If an abettor of an offence is, on account of his presence at its commission, to be charged under Sect. 114 as a principal, his abetment must continue down to the time of the commission of the offence. If he distinctly withdraws at any moment before the final act is done, the offence cannot be held committed under his continuing abetment.—Reg. v. Amrita Govinda, 10 Bom. H.C.R. Ap. Cr. Ju. 497. Where the court finds that parties came with a number of armed men and carried off a crop, the finding amounts to that of a forcible carrying off without the consent of the owner, even if such parties took no part in the actual carrying off.—Reg. v. Shib Chunder Mundle, 8 W.R. Crim. 59.

**Sect. 115.** *Abetment of an Offence punishable with death or transportation for life.*—Whoever abets the commission of an offence punishable with death or transportation for life shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

*Illustration.*

A instigates B to murder Z. The offence is not committed. If B had murdered Z he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years, and also to a fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

**Sect. 116.** *Abetment of an Offence punishable with imprisonment. If the Abettor or the Person abetted be a Public Servant whose duty it*

*is to prevent the Offence.*—Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence, for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both; and if the abettor or the person abetted is a public servant whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

*Illustrations.*

- (a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.
- (b) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.
- (c) A, a police officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.
- (d) B abets the commission of a robbery by A, a police officer, whose duty it is to prevent offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

**Sect. 117.** *Abetting the commission of an Offence by the Public, or by more than ten Persons.*—Whoever abets the commission of an offence by the public generally, or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

*Illustration.*

A affixes in a public place a placard, instigating a sect consisting of more than ten members, to meet at a certain time and place for the purpose of attacking the members of an adverse sect while engaged in a procession. A has committed the offence defined in this section.

**Sect. 118.** *Concealing a design to commit an Offence punishable with death or transportation for life.*—Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or transportation for life, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or if the offence be not committed, with imprisonment of either description for a term which may extend to three years; and in either case shall also be liable to fine.

*Illustration.*

A knowing that dacoity is about to be committed at B, falsely informs the magistrates that dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B, in pursuance of the design. A is punishable under this section.

**Note.**—The concealment must tend and be intended to bring about or facilitate the crime. Concealment of an offence after it has taken place is not of itself an abetment—5 R.I. and P. 106; though, coupled with other facts, it may be evidence of an abetment.

**Sect. 119.** *A public servant concealing a design to commit an offence.*—Whoever, being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence, the commission of which it is his duty as such public servant to prevent, voluntarily conceals, by any act or illegal

omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both; or if the offence be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years; or if the offence be not committed, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

*Illustration.*

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has, by an illegal omission, concealed the existence of B's design, and is liable to punishment according to the provision of this section.

**Note.**—The words, “the commission of which it is his duty as such public servant to prevent,” are important.

**Sect. 120.** *Concealing a design to commit an Offence punishable with imprisonment.*—Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

**Note.**—*Offences under these sections are triable by the court by which the principal Offence is triable. The question as to whether a*

*summons or warrant should issue in the first instance, and whether police officers may or may not arrest without a warrant, depends upon the rules laid down for the offence abetted. Under Sects. 115, 118, and 119 (if the offence concealed be punishable with death or transportation for life), defendants are not bailable; in other cases this depends upon the power to admit to bail for the principal offence.*

In some cases coming under this section there must necessarily be great difficulty in determining the exact meaning to be given to the words, "voluntarily conceals by any act or illegal omission." It cannot be intended that every person, on learning the existence of a design to commit an offence, is bound in every case, no matter how great the personal inconvenience, loss, or danger, to acquaint the police or other authorities at once with the existence of such design, on pain of himself committing an offence under this section. Probably no definite rule could be laid down for such cases, and each must be determined on its own merits. This question is discussed at length in Mayne's Commentaries on the Penal Code, p. 98, 99. The fact of this section following on Explanation 1 of Sect. 107 appears to show this section is intended to have a wide application.—See Sect. 89 of the Crim. Pro. Code.



## CHAPTER VI.

## OFFENCES AGAINST THE STATE.

*Waging War.*

**Sect. 121.** *Waging War, &c.*—Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with death or transportation for life, and shall forfeit all his property.

*Illustrations.*

- (a) A joins an insurrection against the Queen. A has committed the offence defined in this section.
- (b) A in India abets an insurrection against the Queen's government in Ceylon, by sending arms to the insurgents. A is guilty of abetting the waging war against the Queen.

**Sect. 121A.** *Conspiracy to commit Offences punishable by Sect. 121.*—Whoever within or without British India conspires to commit any of the offences punishable by Sect. 121, or to deprive the Queen of the sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years.

*Explanation.*—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

**Note.**—The above Sect. 121A is made part of this Act by Act

xxvii. of 1870. No charge of an offence punishable under this section shall be entertained by any court unless the prosecution be instituted by order of or under authority from the Local Government. Chapters iv. (*General Exceptions*), v. (*Of Abetment*), and xxiii. (*Of Attempts to commit Offences*), apply to offences punishable under this section.—(Act xxvii. of 1870.) For Sect. 122, see p. 102.

**Sect. 125. *Waging War against any Asiatic Power in alliance with the Queen.***—Whoever wages war against the Government of any Asiatic power in alliance or at peace with the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to which fine may be added; or with imprisonment of either description for a term which may extend to seven years, to which fine may be added; or with fine.

**Note.**—By Sect. 465 of the Criminal Procedure Code, a complaint of an offence punishable under this chapter, except Sect. 127 (receiving property acquired by depredation), or punishable under Sect. 294A, shall not be entertained by any court, unless the prosecution be instituted by order of, or under authority from, the Governor-General of India in Council, or the Local Government, or some officer empowered by the Governor-General in Council to order or authorise such prosecution, or unless instituted by the Advocate-General.

*Sects. 121, 121A, and 125, triable by the Court of Session. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are not bailable.*

### *Charge.*

That you, on or about the       day of       , at       ,  
waged war (or attempted to wage war, or abetted the waging of war) against the Queen (or against       an Asiatic power, in alliance with, or at peace with the Queen); and that you have thereby committed an offence punishable under Sect. 121 (125) of the Indian Penal Code, and within, &c.

### *Evidence.*

In order to support this charge, it is necessary to prove that which in law amounts to a waging of war, or an attempt to wage war, directly or constructively, against the Queen or against any

Asiatic power in alliance or at peace with the Queen ; and to prove that the person charged was either present and actually engaged in it, or was aiding and abetting it. The waging war intended by these sections is an offence of a narrower description than that called in England levying war. Levying war includes not only the actual disposition of an armed force, but also the collection and training of such force. Waging war evidently only refers to the actual carrying on of aggressive operations with or without actual fighting taking place. Waging war is nearly the same as what is called in English law direct levying of war.

The number of persons assembled is not material to constitute either a levying or a waging of war ; three or four will constitute it as well as a thousand—3 Inst. 9. It is not necessary that they should be armed with military weapons, or with colours flying—Fost. 208 ; nor is actual fighting necessary—Fost. 218 ; 1 Hale, 144 ; if substantial steps be taken towards that end, beyond the mere collection of a number of men or arms together, which is met by Sect. 122. But there must be an insurrection, there must be force accompanying that insurrection, and it must be for an object of a general nature—Reg. v. Frost, 9 C. & P. 129 ; and not in furtherance of some private grievance.

War waged against a sovereign supposes an open rebellion against him for the purpose of deposing or imprisoning him, or of getting him into the power of the rebels, or of forcing him to put away his ministers, or of overturning his government—1 Hale, 152 ; Fost. 210 ; and see R. v. The Earls of Essex and Southampton, 1 St. Tr. 197 : and includes the holding or defending any of the sovereign's castles, forts, or ships against the sovereign or his forces, or delivering them up to rebels through treachery—2 Inst. 10 ; Fost. 219 ; 1 Hale, 525, 526. In case of war waged against a sovereign, all persons assembling and marching with the rebels are guilty, whether they are aware of the purpose of the assembly, or aid and assist in committing acts of violence or not—R. v. The Earls of Essex and Southampton ; Moore, 621 : unless compelled to join and continue with them *pro timore mortis*. But, under the Penal Code, this does not extend to the participating in crimes punishable with death. But if a person is not actively taking part in the main enterprise, but keeping himself in such a position as to be able to aid those who are, then such person is guilty of abetting

the waging war against the Queen or sovereign of the country where the war is actually waged. In order to maintain the charge either of waging war or of abetting the waging war, proof must be given of a war actually waged, and not merely of a conspiracy to wage it.—1 Hale, 141-148; 1 Hawk. c. 17, s. 27. A conspiracy to wage war, however, is provided for by Sect. 121A.

The existence of a State as a separate power is a fact of which judicial notice will be taken by the courts of law, if such State has been recognised by the sovereign power under which the courts are constituted. But if, upon a civil war in any country, one part of a nation should separate from the other, and establish for itself an independent government, the newly-formed nation cannot be recognised by the courts of law until it has been recognised by the sovereign. Still the judges are bound, *ex officio*, to know whether or not the government has recognised such nation as an independent State.—Taylor on Evidence, p. 3. If there should be any doubt on this point, the court should refer to its superior court, through which information will be obtained from that department of the Government within whose province the subject actually falls.

The rule of English statute law in regard to treason and misprision of treason is, that no person shall be indicted, tried, or attainted thereof but upon the oaths and testimony of two lawful witnesses. The repealed Evidence Act ii. of 1855 recognised the English law on this subject, Sect. 28 (which provided that the direct evidence of one witness, entitled to full credit, should be sufficient for proof of any fact in any court), making an exception in cases of treason. But this exception no longer holds; for now, under Sect. 134 of the present Evidence Act i. of 1872, "No particular number of witnesses shall in any case be required for the proof of any fact." Under English statute law the two witnesses in cases of treason must testify, "either both to the same overt act, or one to one and the other to another overt act of the same treason, unless the accused shall openly, without violence, confess the same; and further, that if two or more distinct treasons, of divers heads or kinds, shall be alleged in one indictment, one witness produced to prove one of these treasons, and another another, shall not be deemed to be two witnesses to the same treason." This protective rule, which in England has remained in its present state since the days of King William III., and in Ireland was adopted in the year 1821,

has been incorporated, with some slight variation, into the constitution of America, and may be met with in the statutes of most, if not all, of the States of the Union. Any collateral matter not conducing to the proof of the overt acts of treason may be proved by a single witness, or by any other evidence admissible at common law—*e.g.*, that the prisoner is a subject of the British Crown. The rule of the statute law, which requires two witnesses in a case of treason, does not in England apply to those treasons which consist in compassing or imagining the death or destruction, or any bodily harm tending to the death or destruction, maiming, or wounding of the Queen, where the overt act or acts alleged shall be the assassination of her Majesty, or any attempt to injure in any manner whatsoever her royal person, or to the misprisions of any such treason; but in all these cases the accused shall be indicted, arraigned, tried, and attainted in the same manner, and according to the same course and order of trial, and upon the like evidence, as if he stood charged with murder.—See 39 & 40 Geo. III. c. 93, 1 & 2 Geo. IV. c. 24, 5 & 6 Vict. c. 51; Field on the Indian Evidence Act, p. 453.

The offence of engaging in a conspiracy to wage war, and that of abetting the waging of war, against the Queen, under Sect. 121 are offences under the Penal Code only; and therefore (independently of any other reason) the provisions of 7 Will. III. c. 3, s. 5, which require charges of treason and misprision of treason to be brought within three years of the commission of the offence, do not apply.—*Reg. v. Amiruddin*, 7 Ben. L.R. 63, and 15 W.R. Crim. 25.

### *Collecting Arms, &c.*

**Sect. 122.** *Collecting Arms, &c.*—Whoever collects men, arms, or ammunition, or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall forfeit all his property.

**Note.**—See Sect. 465 of the Criminal Procedure Code. *Triable by the Court of Session. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are not bailable.*

*Charge.*

That he, on or about the            day of            , at            , collected men (*or arms, or ammunition, or prepared to wage war*) with the intention of waging war (*or of being prepared to wage war*) against the Queen, and that he has thereby committed an offence punishable under Sect. 122 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove that the defendant actually collected men, arms, ammunition, or in any other way prepared to wage war, and that they were collected for the purpose of waging war or being prepared to wage war against the Queen, or were collected under such circumstances that the court or jury could infer that he so collected them for no other purpose.

*Concealing design to wage War.*

**Sect. 123.** *Concealing a design to wage War.*—Whoever by any act, or by any illegal omission, conceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Note.**—See Sect. 465 of the Crim. Pro. Code. *Triable by the Court of Session. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are not bailable.*

*Charge.*

That you, on or about the            day of            , at            , concealed the existence of a design to wage war against the Queen, intending by such concealment to facilitate (*or knowing it to be likely that such concealment would facilitate*) the waging of such war, and that you have thereby committed an offence punishable under Sect. 123 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove the existence of a design to wage war, that the defendant knew of such design, and that he concealed it either by one act, or

by a series of acts, or by one illegal omission, or by a series of illegal omissions. The concealment will only be able to be proved inferentially, as, to prove it actually, it would be necessary to call every one to whom he ought to have made the design known, which would be in fact to call every official in the neighbourhood. The most usual case will be that of a conspiracy to wage war, in which case every one who takes an active part in the conspiracy will be guilty of an offence under this section. The intent with which the design was concealed must also be shown directly or inferentially.

*Assaulting Governor-General, &c.*

**Sect. 124.** *Assaulting Governor-General, &c.*—Whoever, with the intention of inducing or compelling the Governor-General of India, or the Governor of any Presidency, or a Lieutenant-Governor, or a Member of the Council of the Governor-General of India, or of the Council of any Presidency, to exercise or refrain from exercising in any manner any of the lawful powers of such Governor-General, Governor, Lieutenant-Governor, or Member of Council, assaults, or wrongfully restrains, or attempts wrongfully to restrain, or overawes by means of criminal force or the show of criminal force, or attempts so to overawe, such Governor-General, Governor, Lieutenant-Governor, or Member of Council, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Note.**—See Sect. 465 Crim. Pro. Code. *Triable by the Court of Session. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are not bailable.*

*Charge.*

That you, on or about the                      day of                      , at                      with the intention of inducing (or compelling) the Right Hon. A. B., the Governor-General of India (or the Governor of the                      Presidency, or the Lieutenant-Governor of                      , or the Hon. A. B., a Member of the Council of the Governor-General of India, or of the Council of the                      Presidency) to exercise (or refrain from exercising) a lawful power as such                      , assaulted (or wrongfully restrained, or attempted wrongfully to

restrain ; or overawed by means of criminal force, or by the show of criminal force) such \_\_\_\_\_, and that you have thereby committed an offence punishable under Sect. 124 of the Indian Penal Code, and within, &c.

### *Evidence.*

Prove that the defendant committed the assault on, or wrongfully restrained, or attempted wrongfully to restrain, or overawed by means or by show of criminal force, some one of the persons named in the section. It will be sufficient to prove that such person acted as described, and will not be necessary to prove his appointment, for it is a maxim of law that *omnia præsumuntur ritè et solemniter esse acta, donec probetur in contrarium*. The Penal Code makes a special provision to this effect with respect to public servants, but only extends the provision to cases in which the words "public servant" are used ; hence, in the present case, the maxim of law alone must prevail. As to what is wrongful restraint, see Sect. 339, *post* ; and for the definition of criminal force, see Sects. 349 and 350, *post*. Prove also by the words or acts of the defendant, or by the circumstances connected with the commission of the offence, the object with which it was committed.

**Sect. 124A. *Exciting Disaffection.***—Whoever by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites or attempts to excite feelings of disaffection to the government established by law in British India, shall be punished with transportation for life, or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

*Explanation.*—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause.

**Note.**—The above Sect. 124A is made part of this Act by Act xxvii. of 1870. No charge of an offence punishable under this



section shall be entertained by any court unless the prosecution be instituted by order of or under authority from the Local Government, Chap. iv. (*General Exceptions*), and v. (*Of Abetment*), apply to offences under this section (Act xxvii. of 1870).—For Sect. 125, see p. 99.

### *Committing Depredation.*

**Sect. 126.** *Committing depredation on Territories of any friendly Power.*—Whoever commits depredation, or makes preparations to commit depredation, on the territories of any power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used, or intended to be used, in committing such depredation, or acquired by such depredation.

**Note.**—See Sect. 465 Crim. Pro. Code. Sects. 120 and 126 *triable by the Court of Session. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are not bailable.*

### *Charge.*

That you, on or about the                      day of                      , at                      , committed (or made preparations to commit) depredation on the territories of                      , a power in alliance (or at peace) with the Queen, and that you have thereby committed an offence punishable under Sect. 126 of the Indian Penal Code, and within, &c.

### *Evidence.*

The proof of this offence will be very similar to that of waging war against an Asiatic power in alliance or at peace with the Queen. In fact, it may be found that a person charged with that offence is really guilty of this, as an expedition which was apparently for the purpose of waging war may really be only for that of plunder. The power on whose territories the depredation is to be committed need not be an Asiatic power, as in the 125th section. There must be an entry of some kind, armed or otherwise, into the territories of a foreign friendly power during which depredation is committed, or there must be preparations made for the purpose of such an expedition.

*Receiving Property acquired by Depredation.*

**Sect. 127.** *Receiving Property acquired by Depredation.*—Whoever receives any property, knowing the same to have been taken in the commission of any of the offences mentioned in Sects. 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and to forfeiture of the property so received.

**Note.**—*Triable by the Court of Session. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are not bailable.*

*Charge.*

That you, on or about the                      day of                      , at                      , received a ring and a brooch ("any property"), knowing the same to have been taken in the commission of depredation on the territories of                      , a power in alliance (or at peace) with the Queen (or in waging war against                      , an Asiatic power in alliance or at peace with the Queen); and that you have thereby committed an offence punishable under Sect. 127 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove the waging war, or the committing depredation, the receipt of the property, and the knowledge of the defendant. As to what constitutes receipt and knowledge, see the Chap. on the receipt of Stolen Property, *infra*, the remarks in which will also apply to this section. There is no definition of the word "property" in the Code, although there is in Act xviii. of 1862 (see Sect. 57); but there is no doubt that property is a more extensive term than, and includes "moveable property," which words under this Code "are intended to include corporeal property of every description, except land and things attached to the earth, or permanently fastened to anything which is attached to the earth."—Sect. 22.

*Suffering State Prisoner to Escape.*

**Sect. 128.** *Voluntarily allowing Prisoner of State, &c., to escape.*—Whoever, being a public servant, and having the custody of any

State prisoner, or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 129.** *Negligently suffering Prisoner of State, &c., to escape.*—Whoever, being a public servant, and having the custody of any State prisoner, or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

**Note.**—*Explanation* of escape of State prisoner, see Sect. 130, p. 109; see Sect. 465 Crim. Pro. Code.

*Offences under Sect. 128 are triable by the Court of Session; those under Sect. 129 either by the Court of Session or a magistrate of the first class. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are not bailable under Sect. 128, but bailable under Sect. 129.*

#### *Charge.*

That you being a public servant, and as such having the custody of \_\_\_\_\_, a State prisoner (or prisoner of war), on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, voluntarily allowed (or negligently suffered) such prisoner to escape from \_\_\_\_\_, the place in which such prisoner was confined; and that you have thereby committed an offence punishable under Sect. 128 (or 129) of the Indian Penal Code, and within, &c.

#### *Evidence.*

Prove that the accused acted as a public servant, and had the custody, in a place of confinement, of a State prisoner, or prisoner of war, and that such prisoner escaped. It must be proved also that such escape was through the voluntary act of the accused, or through his negligent default. It is not necessary to prove actual negligence, the law will imply it—see 1 Hale, 600; but if, in fact, the escape were not negligently suffered or voluntarily allowed, as if the prisoner by force rescued himself, or was rescued by others, and the defendant made fresh pursuit after him, but without effect; all this must be shown upon the part of the defendant. Also, it is

immaterial whether the prisoner were guilty of such acts as would justify his detention as a State prisoner, provided the warrant or authority was such on the face of it as would justify the accused in detaining him.

*Aiding State Prisoner to Escape.*

**Sect. 130.** *Aiding escape of and harbouring Prisoner.*—Whoever knowingly aids or assists any State prisoner, or prisoner of war, in escaping from lawful custody, or offers or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation.*—A State prisoner or prisoner of war who is permitted to be at large on his parole within certain limits in British India is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

*Note.*—See Sect. 465 Crim. Pro. Code. *Triable by the Court of Session.* A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are not bailable.

*Charge.*

That you, on or about the            day of            , at            , knowingly aided (*or assisted, or rescued, or attempted to rescue*)            , a State prisoner (*or prisoner of war*) in escaping from lawful custody; *or* knowingly harboured (*or concealed, or offered, or attempted to offer resistance to the recapture of*)            , a State prisoner (*or prisoner of war*) who had previously escaped from lawful custody; and that you have thereby committed an offence punishable under Sect. 130 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove that A B was in custody as a State prisoner or prisoner of war, and that the accused aided and assisted such prisoner to escape from lawful custody; or that the accused rescued him or attempted to rescue him from such custody. Or such prisoner

having escaped from lawful custody, the accused, knowing the facts, harboured or concealed him, or offered, or attempted to offer resistance to officers who were endeavouring to recapture him. The knowledge of the defendant may be proved either from the admission of the accused before a magistrate, or by evidence of circumstances from which the court or jury may fairly presume such a knowledge. For further remarks on this offence, in respect of its necessary ingredients, see the Chapter on Offences against Public Justice.

## CHAPTER VII.

### OFFENCES RELATING TO THE ARMY AND NAVY.

**Sect. 131. *Abetting Mutiny, &c.***—Whoever abets the committing of mutiny by an officer, soldier, or sailor, in the army or navy of the Queen, or attempts to seduce any such officer, soldier, or sailor, from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation.*—In this section the words “officer” and “soldier” include any person subject to the articles of war for the better government of her Majesty’s army, or to the articles of war contained in Act No. v. of 1869.

*Note.*—The above explanation is added by Act xxvii. of 1870.

**Sect. 132. *Abetting Mutiny, if Mutiny be committed in consequence thereof.***—Whoever abets the committing of mutiny by an officer, soldier, or sailor, in the army or navy of the Queen, shall, if mutiny be committed in consequence of that abetment, be punished with death, or with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 133. *Abetting assault by Soldier, &c.***—Whoever abets an assault by an officer, soldier, or sailor in the army or navy of the Queen, on any superior officer, being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**Sect. 134. *Abetting such assault, if the assault be committed.***—Whoever abets an assault by an officer, soldier, or sailor, in the army or navy of the Queen, on any superior officer, being in the execution of his office, shall, if such assault be committed in conse-

quence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Sect. 135. *Abetting desertion.***—Whoever abets the desertion of any officer, soldier, or sailor, in the army or navy of the Queen, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 136. *Harbouring a Deserter.***—Whoever, except as herein-after excepted, knowing, or having reason to believe, that an officer, soldier, or sailor, in the army or navy of the Queen has deserted, harbours such officer, soldier, or sailor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Exception.*—This provision does not extend to the case in which the harbour is given by a wife to her husband.

**Sect. 137. *Deserter concealed on merchant Vessel.***—The master, or person in charge of a merchant vessel on board of which any deserter from the army or navy of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment, but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

**Sect. 138. *Abetting act of insubordination.***—Whoever abets what he knows to be an act of insubordination by an officer, soldier, or sailor in the army or navy of the Queen shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

**Sect. 139. *Exception of Persons subject to Articles of War.***—No person subject to any articles of war for the army or navy of the Queen, or for any part of such army or navy, is subject to punishment under this Code for any of the offences defined in this chapter.

**Note.**—*The offences enumerated in Sects. 131, 132, 134, are triable by the Court of Session; that in Sect. 133, by the Court of Session, or a magistrate of the first class; those in Sects. 135 to 138, by a magistrate of the first or second class. Persons committing the offences described in this chapter may be arrested without a warrant, except in*

*the case of offenders under Sect. 137; and a warrant shall issue in the first instance, except in respect of offences under Sect. 137, and in that case a summons. Under Sects. 131 to 134, defendants are not bailable, but under Sects. 135 to 138 they are.*

### *Harbouring and Abetting.*

All that is necessary in respect of these offences has already been provided by the general chapter on this subject, p. 83. The necessity for this chapter in the Code is thus explained in the Report of the Indian Law Commissioners: "It is obvious that a person who, not being himself subject to military law, exhorts or assists those who are subject to military law to commit gross breaches of discipline, is a proper subject of punishment. But the general law respecting the abetting of offences will not reach such a person; nor, framed as it is, would it be desirable that it should reach him. It would not reach him, because the military delinquency which he has abetted is not punishable by this Code, and therefore is not, in our legal nomenclature, an offence. Nor is it desirable that the punishment of a person not military who has abetted a military offence should be fixed according to the principles on which we have proceeded in framing the law of abetment. We have provided that the punishment of an abettor of an offence shall be equal or proportional to the punishment of the person who commits the offence. And this seems to us a sound principle when applied only to the punishments provided by the Code. But the military penal law is, and necessarily must be, far more severe than that under which the body of the people live. The severity of the military penal law can be justified only by reasons drawn from the peculiar habits and duties of soldiers, and from the peculiar relation in which they stand to the Government. The extension of such severity to persons not members of the military profession appears to us altogether unwarrantable. If a person not military who abets a breach of military discipline should be made liable to a punishment, regulated according to our general rules, by the punishment to which such a breach of discipline renders a soldier liable, the whole symmetry of the penal law would be destroyed. He who would induce a soldier to disobey any order of a commanding officer would be liable to be punished



more severely than a dacoit, a professional thug, a ravisher, or a kidnapper."

See also the sections relating to Harboursing.

*Wearing the Dress of a Soldier.*

**Sect. 140.** *Wearing the Dress of a Soldier.*—Whoever, not being a soldier in the military or naval service of the Queen, wears any garb, or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, which may extend to five hundred rupees, or with both.

**Note.**—*Triable by any magistrate. A summons should issue in the first instance. Police officers may arrest without a warrant. Defendants are bailable.*

*Charge.*

That you, on or about the                      day of                      , at                      , not being a private soldier in the Bombay Native Infantry, or in any portion of Her Majesty's military service, did wear a certain garb (*or* carry a certain token) resembling the garb (*or* token) used by the private soldiers of the                      regiment of the Bombay Native Infantry, with the intention that it should be believed that you were at the time of such wearing a private soldier in the said regiment of Bombay Native Infantry; and that you have thereby committed an offence punishable under Sect. 140 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove that the accused wore some military dress in use in some portion of the Queen's service, and that he was not entitled to wear it. This section does not, however, prohibit or render punishable the mere wearing of any garb or dress or token; but the wearing must be shown to have been for the purpose of inducing people to believe that the wearer was at the time of wearing actually in the service to which the garb' or token belonged, and not merely for the purpose of representing that he had been in such service. Much less does the Code prohibit the wearing of cast-off uniforms for the mere purpose of clothing.

## CHAPTER VIII.

## OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

**Note.**—In this, the eighth chapter of the Penal Code, there will be found four principal classes of offences—unlawful assembly, riot, affray, and assembly of more than five persons likely to cause a breach of the peace—besides others springing out of one or more of these.

*Unlawful Assembly.*

**Sect. 141. *Unlawful Assembly.***—An assembly of five or more persons is designated an unlawful assembly, if the common object of the persons composing that assembly is—

*First*, To overawe by criminal force, or show of criminal force, the legislative or executive government of India, or the government of any presidency, or any lieutenant-governor, or any public servant in the exercise of the lawful power of such public servant ; or,

*Second*, To resist the execution of any law, or of any legal process ; or,

*Third*, To commit any mischief or criminal trespass, or other offence ; or,

*Fourth*, By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water, or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right ; or,

*Fifth*, By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or omit to do what he is legally entitled to do.

**Explanation.**—An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.

**Sect. 142.** *Being a Member of an unlawful Assembly.*—Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

**Sect. 143.** *Punishment.*—Whoever is a member of an unlawful assembly shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

**Sect. 144.** *Joining unlawful Assembly armed.*—Whoever, being armed with any deadly weapon, or with anything which, being used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 145.** *Joining or continuing in an unlawful Assembly, knowing that it has been commanded to disperse.*—Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Note.**—By Sect. 480 of the Criminal Procedure Code, any magistrate or officer in charge of a police station may command any unlawful assembly, or any assembly of five or more persons, likely to cause a disturbance of the public peace, to disperse, and it shall thereupon be the duty of the members of such unlawful assembly to disperse accordingly.

*Triable by any magistrate. A summons should issue in the first instance under Sect. 143; a warrant under Sects. 144 and 145. Police officers may arrest without a warrant. Defendants are bailable.*

#### *Charge.*

That you, on or about the                      day of                      , at                      ,  
(being armed with a deadly weapon, to wit, a gun, or a certain thing which, used as a weapon of offence, was likely to cause death, to wit, a life-preserver), together with others to the number of more than five, were a member of an unlawful assembly, to wit, an assembly for the purpose of (*here insert one of the purposes forbidden by Sect. 141*), and that you have thereby committed an

offence punishable under Sect. 143 (144) of the Indian Penal Code, and within, &c.

*Evidence.*

Prove the assembly of five or more persons for any one of the objects enumerated in Sect. 141, which renders the assembly unlawful in its inception; or, that the assembly, having come together for a lawful object, at some period in its continuance one of these objects was adopted as its common purpose, by which it will be changed from a lawful to an unlawful assembly. Mere numbers, however, will not make an assembly unlawful when the object is to procure some public result, if the means by which that result is to be attained be lawful. But where the defendants assembled and forcibly interrupted a procession, it was held that that act was forbidden by cl. 4 of Sect. 141, although they acted upon the ground that the procession was a nuisance or annoyance to them or their community.—Madras High Ct. Rulings, 5 Madras H.C. Rep., App. 6. Meetings for the purpose of eliciting, declaring, or altering public opinion on any matter are perfectly legal; and if, further, it is the intention of the promoters to get up a petition to Government, the meeting will have the additional sanction of the Bill of Rights—1 Wm. and Mary, s. 2, c. 2—which declares “that it is the right of the subjects to petition the King, and that all commitments and prosecutions for such petitions are illegal.” But meetings which are held under the cloak of petitioning or public discussion merely for the purpose of intimidation will be illegal, in spite of the apparent legality of their object. It is necessary also to prove that the defendant was aware of the object for which the meeting assembled, or of the object which was adopted during its continuance. This may be shown from the defendant’s acts, or from the assembly’s, done in his presence, or from the words spoken in his hearing, or from any other facts from which it may reasonably be inferred that he was cognisant of the object of the meeting. Finally, prove that the accused intentionally joined or continued in the assembly after he knew its character. If the accused joined merely from curiosity, to hear what was going on, and as soon as he had found out its object, went away; or if, being in the crowd, he was unable to extricate himself, he will not be guilty of the offence mentioned in this section; nor, if he joined under compulsion, or was kept in the

assembly by force: but if, after having joined by compulsion, he took any active part in the proceedings, or did not leave as soon as the coercion ceased, he would be guilty of the offence of being a member of an unlawful assembly.

If it be proved that the accused, in addition to being a member of an unlawful assembly, was also armed with a gun or other deadly weapon, or with anything which might be used as a weapon of offence, and which when so used was likely to cause death, he will be guilty of the higher offence of being an armed member of an unlawful assembly, and liable to punishment under Sect. 144.

*Being Member of unlawful Assembly after command to disperse.*

*Charge.*

That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, joined (or continued in) an unlawful assembly, knowing at the time you so joined (or continued in) such assembly, that the said assembly had been commanded to disperse, in the manner prescribed by law; and that you thereby committed an offence punishable under Sect. 145 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove the existence of an unlawful assembly, that such assembly had been commanded to disperse in the manner prescribed by the Criminal Procedure Code, *ante*, p. 116—*i.e.*, by a magistrate or officer in charge of a police station—and that the accused joined, or still continued in, the assembly, after such command to disperse. The same remarks as to the liability of persons in the assembly, apply in this case as in the previous one. It is necessary, however, that persons should be very careful how they join an assembly, as it is very difficult to separate the acts of one person from those of the crowd, and innocent individuals may thus be mixed up with the guilty, in such a way as to become legally responsible for the acts of the assembly as a whole.

*Rioting.*

**Sect. 146. Riot.**—Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

**Sect. 147. *Punishment for Rioting.***—Whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 148. *Rioting, armed with a deadly Weapon.***—Whoever is guilty of rioting, being armed with a deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Sect. 149. *Offence committed in prosecution of common object.***—If an offence is committed by any member of an unlawful assembly, in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

**Note.**—*Offences under Sect. 147 are triable by any magistrate ; those under Sect. 148, by the Court of Session or magistrate of the first class ; those under Sect. 149, by the court by which the offence committed is triable. A warrant should issue in the first instance. Police officers may arrest without a warrant, and defendants are bailable under Sects. 147 and 148. Under Sect. 149, these particulars depend upon the limitations laid down in respect of the offence committed.*

#### *Charge.*

That you, on or about the                      day of                      , at  
(being armed with a deadly weapon, to wit, a gun, or with a certain thing which, used as a weapon of offence, was likely to produce death, to wit, a life-preserver), committed the offence of rioting ; \* and that you thereby committed an offence punishable under Sect. 147 (or 148) of the Indian Penal Code, and within, &c.

#### *Evidence.*

Prove the existence of an unlawful assembly ; prove that the assembly used force or violence in the prosecution of the common object, or that some member of the assembly used force or violence in the prosecution of such object, and that the accused was a member of the assembly. If the charge be one of rioting armed, prove further that the accused was armed with a gun or other deadly

\* See remarks on the form of the charge, p. 122.

weapon, or with something which, if used as a weapon of offence, would be likely to cause death. For a definition of what constitutes force, see Sect. 349 of the Penal Code. Under the English law, if speeches of a riotous character be made, the speakers are guilty of rioting, although they leave the meeting before the actual disturbance takes place, provided it occur immediately—*R. v. Sharpe*, 3 Cox, 288—and so doubtless under the present sections they would be also; or they might be charged, under Sect. 153, with wantonly provoking to riot, if the particular form of words has been made punishable under the Code, or has been prohibited in any other way by law, or furnishes ground for a civil action.

Sect. 149 is very badly worded, and does not express its meaning clearly. Its form, however, as it stands, and its interpretation on the cases, show it was intended that members of an unlawful assembly are not to be responsible for *every* offence committed by any particular member in furtherance of their common object; but only for such offences as it can be shown the members contemplated would or might be committed in furtherance of their common design; or such offences as must or might naturally, and not by a sudden and unpremeditated act, arise from the prosecution of their common object.—*Reg. v. Sabid Ali*, 20 W.R. Crim. 5, & 11 B.L.R. 347. See amendment of Sect. 34 by Act xi. of 1874. Thus, if an assembly is convened for the purpose of overawing the Governor-General, and in furtherance of that object attempts to force an entry into the Government House, and in the course of resistance to such attempt any one guarding the doors is killed, each one in the assembly is guilty of murder; but if, on the road from the place of meeting to the Government House one of the assembly picks a bystander's pocket, the thief alone is guilty, and no one else in the assembly necessarily partakes of his guilt.

In accordance with this, where the accused men were members of an unlawful assembly, the common object of which was the abduction of a certain woman, and all bore arms, and during the prosecution of that object the woman's daughter interfered to prevent the abduction of her mother, and was killed by one of the accused, it was held that each of the members was guilty of the offence of murder, all being prepared to resist any attempt which might be made to prevent them from accomplishing their designs.—*In re Golam Artin*, 4 Ben. L.R. App. 47, and 13 W.R. Crim. 33.

But where a large body of men belonging to one faction waylaid another body of men belonging to another faction, and a fight ensued, in the course of which a member of the first faction was wounded, and retired to the side of the road, taking no further part in the affray, and after such retirement a member of the second faction was killed, it was held by Norman, J. (whose opinion prevailed), that the wounded man had ceased to be a member of the unlawful assembly when he retired wounded, and that he could not under Sect. 149 be made liable for the subsequent murder.—Reg. v. Cabil Kazee, 3 Ben. L.R.A. Cr. J. 1. Where two opposite factions commit a riot, it is irregular to treat both parties as constituting one unlawful assembly, and to try them together, as they had not one common object within the meaning of Sect. 141; each party should be committed for trial and tried separately.—Reg. v. Durzoolla, 9 W.R. Crim. 33; and Reg. v. Surroop Chunder Paul, 12 W.R. Crim. 75.

Thirteen persons were charged with rioting, twelve were acquitted and one convicted. *Quære*, whether the verdict can be sustained when the evidence points only to the thirteen arraigned and to no others, seeing that the Code says that five men at least must be concerned in order to constitute a riot.—Reg. v. Chinnapa Chetty, 2 Madras Jurist, 169.

Where there has been no unlawful assembly, but a sudden quarrel, and an affray, from which resulted grievous hurt, and consequent death, there can only be a conviction for an affray, and not one for rioting.—Reg. v. Phoollee Misser, 12 W.R. Crim. 72. In this case the question whether any one of the accused was guilty of culpable homicide does not seem to have been considered by the court.

Where a riot took place, both parties turning out armed with deadly weapons, it cannot be said that there was any right of private defence on either side, as both parties well knew beforehand what was likely to take place. An indigo factory has no right forcibly to attempt to sow indigo in land already sown with corn, although it was indigo contract land; and villagers have no right to oppose such forcible sowing by force, especially when a police station is near at hand.—Reg. v. Jeolull, Rampertaub, and Sookum, 3 R.C.C. Cr. 21, and 2 Madras Jurist, 168. But where, in investigating a case of dispute as to land between two parties under chapter xxii. of Act xxv. of 1861 (the old Code of Criminal Procedure), the magistrate found that one party was in possession, and the other



party was attempting to turn them out, and there being a charge against both parties of rioting, under Sect. 147, convicted and punished both, the High Court held that the party in possession was protected by Sect. 104 of the Penal Code in maintaining their possession.—*In re Toolsee Singh*, 2 Ben. L.R.A.Cr. J. 16, and 10 W.R. Crim. 64. So, too, where the prisoners, in resisting a sudden attack made upon them by certain persons for the purpose of cutting their crops, not having time to complain to the police, inflicted a wound on one of the other party with a bamboo, from the effects of which he died, the High Court held that the force used and the injuries inflicted were not such as to exceed their right of private defence of their property.—*Reg. v. Guru Charan Chung*, 6 Ben. L.R. App. 9.

Rioting, armed with a deadly weapon, is a distinct offence from stabbing a person on whose premises the riot takes place, and each may be separately punished.—*Reg. v. Kallachand and others*, Calcutta H.C., 2 Madras Jurist, 282. But where, under the old Code, the prisoners were charged with rioting, being armed with deadly weapons, and with causing hurt by shooting, and their conviction for the latter offence rested solely on the fact of their belonging to a party, by one of whom (not in custody) firearms were used, it was held to be wrong to pass a cumulative sentence, and to punish the prisoners both for the rioting and the causing hurt, but that the punishment should have been for one or other of these two offences.—*Reg. v. Durzoolla*, 9 W.R. Crim. 33; and see also *Reg. v. Dina Sheikh*, 10 W.R. Crim. 63. But a cumulative sentence would now be good.

In the High Court in Bengal it has been ruled that "it is quite enough to charge the prisoner with the offence of rioting punishable under Sect. 147 of the Indian Penal Code;" but where "the committing officer has resolved the crime into its elementary facts in the charge, all that combined to constitute the offence should have been charged."—1 W.R.C.L. 10, 4 R. J. & P. 413. As respects the High Court in Madras, Mr Mayne says that their tendency is "to resolve such technical terms into their elements, so as to explain to prisoner what he is charged with."

In a charge under Sect. 149, the common object of the unlawful assembly should be stated.—1 R.C.C. Circ. 3, 16.

*Hiring Persons to assist in an unlawful Assembly, &c.*

**Sect. 150. Hiring, &c., Persons to join an unlawful Assembly.**

—Whoever hires, or engages, or employs, or promotes, or connives at the hiring, engagement, or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement, or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

**Note.**—For Sect. 151, see p. 126.

**Sect. 158. Being hired to take part in, &c., an unlawful Assembly, &c.**—Whoever is engaged or hired, or offers or attempts to be hired or engaged to do or assist in doing any of the acts specified in Sect. 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both; and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed with any deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Note.**—*Offenders under Sect. 150 are triable by the court by which the offence committed is triable; those under Sect. 158, by a magistrate of the first or second class. Under Sect. 158, a summons should issue in the first instance, unless the hiring be to go armed, then a warrant. Police officers may arrest without a warrant, and defendants are bailable under both sections. Under Sect. 150, the issue of a warrant or summons will depend upon the offence committed.*

*Charge of Hiring.*

That you, on or about the            day of            , at            , hired a certain person, to wit, C D, to become a member of an unlawful assembly, and that you have thereby committed an offence punishable under Sect. 150 of the Indian Penal Code, and within, &c.

*Charge of being Hired.*

That you, on or about the            day of            , at            , were hired by a certain person, to wit, C D, for the purpose of doing

an act specified in Sect. 141 of the Indian Penal Code, to wit, for the purpose of overawing by means of criminal force the Lieutenant-Governor of the North-West Provinces ; and that you have thereby committed an offence punishable under Sect. 158 of the Indian Penal Code, and within, &c.

The charges in the other cases referred to in these two sections can easily be framed upon these two models.

### *Evidence.*

In the case of a charge against the person hiring another, prove the hiring, engagement, or employment of some person to become a member of an unlawful assembly. The hiring must be complete—*i.e.*, both hirer and hired must have come to an agreement upon the subject-matter of the agreement ; it will not be sufficient that an offer merely of hiring, &c., should have been made, for the section mentions nothing about an attempt to hire, and by its wording evidently intends that there should be a *locus pœnitentiæ*, so that a person asking another to do certain acts may be able to retract what he has said, and refuse to hire before the person applied to has consented to do what he is asked ; in this the present section differs from Sect. 158, which allows no such *locus pœnitentiæ*. Should, however, the complete hiring, &c., be not proved, the defendant may still be charged with an attempt to hire under Sect. 511 of the Penal Code. If the accused did not himself hire, prove that he promoted or connived at the hiring by some other person. The word promote refers to cases of active assistance in hiring, and must be positively proved. Connivance is a passive allowance of something by a person who is legally bound and physically able to prevent that thing being done. It will therefore be necessary to prove this negative offence of connivance by the concurrence of three things : *first*, that the person accused was legally bound to prevent the hiring ; *second*, that he was physically able to prevent it ; *third*, that he did not prevent it, or do all that lay in his power towards preventing it. In this case, as in the last, a complete hiring must be proved ; and if it be not proved, no charge of an attempt can be made against the defendant, as it is manifest a man cannot attempt to connive—he must either connive, or else not connive. But it is not necessary to prove that the person hired took any part in an unlawful assembly, unless it

is desired to prove that he committed some offence in pursuance of such hiring.

In the case of a charge of hiring under Sect. 150, if the full offence be proved, the person hired is guilty under Sect. 158. In order, however, to bring the defendant within the latter section, it is sufficient if he offers himself, or attempts to be hired to do or assist in doing any of the acts specified in Sect. 141. In the event of the defendant being proved to have offered to go armed, he is guilty of a more serious offence, and is liable to a severer punishment. There is no similar provision for the case of a person who engages another to go armed, and this is only met by the latter clause of Sect. 150, which provides that in the event of the person hired committing any offence in pursuance of the common object of the unlawful assembly, the hirer shall be liable to punishment in the same way as if he had himself been a member of the unlawful assembly, or himself had committed the offence. In this case the following will be the form of the

#### *Charge.*

That you, the said A B, on or about the                      day of                      ,  
at                      , hired one C D to become a member of an unlawful  
assembly, and that the said C D, as a member of such unlawful  
assembly, and in pursuance of such hiring, voluntarily caused grievous  
hurt to one E F; and that you, the said A B, have thereby com-  
mitted an offence punishable under Sect. 150 of the Indian Penal  
Code, and within, &c.

#### *Affray.*

**Sect. 159. *Affray.***—When two or more persons, by fighting in a public place disturb the public peace, they are said to “commit an affray.”

**Sect. 160. *Punishment for committing affray.***—Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine, which may extend to one hundred rupees, or with both.

**Note.**—*Triable by any magistrate. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

*Charge.*

That you, on or about the                      day of                      , at                      , did commit an affray, to wit, by fighting with another man in a public place, so as to disturb the public peace; and that you have thereby committed an offence punishable under Sect. 160 of the Indian Penal Code; and within, &c.

*Evidence.*

Prove that the defendant fought with another person in a public place, for if it be in private, it is an assault merely, and not an affray.—1 Hawk, c. 63, s. 1. Also, no quarrelsome or threatening words whatever will amount to an affray—*id.* s. 3; nor indeed do mere words amount to an assault. This section is simply an enactment of the English common law.

On conviction, defendants may be ordered to find sureties to keep the peace in addition to any other punishment.

**Note.**—For Sect. 161, see p. 133.

*Joining Assembly of five.*

**Sect. 151.** *Joining assembly of five.*—Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

*Explanation.*—If the assembly is an unlawful assembly within the meaning of Sect. 141, the offender will be punishable under Sect. 145.

**Note.**—By Sect. 480 of the Crim. Pro. Code, any magistrate or officer in charge of a police station may command any unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public peace to disperse, and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

*Triable by any magistrate.* A summons should issue in the first instance. Police officers may arrest without a warrant. Defendants are bailable.

*Charge.*

That you, the said A B, on or about the                      day of                      , at                      , knowingly joined (or continued in) an assembly of five (or more than five) persons, such assembly being one likely to cause a disturbance of the public peace, the said assembly having been lawfully commanded to disperse before you the said A B, joined (or continued in) the same, and that you thereby committed an offence punishable under Sect. 151 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove that there was an assembly of five persons at the least, that such assembly was likely to cause a disturbance of the public peace, and that the assembly had been lawfully commanded to disperse—*i.e.*, by a magistrate or an officer in charge of a police station. Prove that after such command the accused either joined or continued in the assembly. If the assembly be not merely one likely to disturb the public, but one collected for any of the purposes enumerated in Sect. 141, then the accused will be a member of an unlawful assembly, and be amenable under that section.

*Resisting Public Servant.*

**Sect. 152.** *Assaulting, &c., Public Servant in suppressing Riot, &c.*  
—Whoever assaults or threatens to assault, or obstructs or threatens to obstruct, any public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens to use, criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Note.**—*Triable by the Court of Session or magistrate of the first class. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are bailable.*

*Provoking to Riot.*

**Sect. 153.** *Wantonly provoking to riot.*—Whoever maliciously or wantonly, by doing anything which is illegal, gives provocation to any person, intending, or knowing it to be likely, that such pro-

vocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

*Note.*—*Triable by any magistrate. If the riot be committed a warrant should issue in the first instance, otherwise a summons. Police officers may arrest without a warrant. Defendants are bailable.*

### *Evidence.*

This section is very vague and comprehensive in its terms. Until a case arises under it, it is impossible to draw a charge, or define with accuracy what evidence will be required to sustain it. The first thing, however, will be to prove that some illegal act was done—*i.e.*, some act which is punishable under the Penal Code, or which is prohibited by law, or which forms the subject of a civil action. Then this act must be done either malignantly or wantonly. The word malignantly, I conceive, signifies more than maliciously. An act which is malignant is also malicious, but every malicious act is not malignant.

*Malitia*, in its proper or legal sense, is different from that sense which it bears in common speech. In common acceptation it signifies a desire of revenge, or a settled anger against a particular person; but this is not the legal sense: and Lord Holt, C.J., says: "Some have been led into mistakes by not well considering what the passion of malice is; they have construed it to be a rancour of mind lodged in the person killing for some considerable time before the commission of the fact, which is a mistake, arising from the not well distinguishing between *hatred* and *malice*. *Envy*, *hatred*, and *malice* are three distinct passions of the mind."—Kel. 127. Amongst the Romans, and in the civil law, *malitia* appears to have imported a mixture of fraud, and of that which is opposite to simplicity and honesty. Cicero speaks of it in *De Natura Deorum*, lib. 3, s. 18, as "*versuta et fallax nocendi ratio*." Malice, "in its legal sense, denotes a wrongful act done intentionally without just cause or excuse"—*per* Littledale, J., in *M'Pherson v.*

Daniels, 10 B. and C. 272. Best, J., in *Rex v. Harvey*, 2 B. and C. 268, also says : " We must settle what is meant by the term malice. The legal import of this term differs from its acceptation in common conversation. It is not, as in ordinary speech, only an expression of hatred and ill-will to an individual, but means any wicked or mischievous intention of the mind."—Russell on Crimes, i. 668. Malignant, beyond this, as its name expresses, imports a moral blackness or darkness in the mind of the person who perpetrates the act to which the term is applied. Whether in practice there will be held to be any distinction between maliciously and malignantly remains to be seen.

Wantonly means, without any lawful object, almost without any definite object, but out of a spirit either of pure mischief or fun. The use of this word in connection with malignantly very much weakens the force of the latter.

Then the act must be one which is likely to cause a riot. But by whom is the rioting to be committed? Riot involves an unlawful assembly and force, used in prosecution of the object of the assembly. Now, an assembly of five or more to resist provocative acts, and force used in such resistance, would in very many cases be perfectly justifiable. Therefore it would seem that the operation of this section must be confined to a very small number of cases, or else that the riot must be on the part of him who does the illegal act, and that he must be joined in its commission by others to the number of five, assembled together for one of the objects prohibited in Sect. 141.

*Offences of Owners and Occupiers of Land.*

**Sect. 154.** *Owner, &c., of Land on which an unlawful Assembly is held.*—Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he, or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful



means in his or their power to prevent it, and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

**Sect. 155.** *Liability of person for whose benefit a Riot is committed.*—Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he, or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

**Sect. 156.** *Liability of Agent or Owner for whose benefit a Riot is committed.*—Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land, respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place, and for suppressing and dispersing the same.

**Note.**—*Triable by a magistrate of the first or second class. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

#### *Charge.*

That, on or about the                      day of                      , at  
an unlawful assembly was held (or a riot was committed) upon  
certain land, to wit,                      , belonging to (or in the occupation  
of) the said A B; and that the said A B (or C D, the agent or  
manager of the said A B) well knowing that the said unlawful  
assembly was being held on the said land, did not give the earliest  
notice thereof in his power to the principal officer at the nearest  
police station, to wit E F at                      , and did not use all the

lawful means in his power to disperse the said unlawful assembly ; whereby the said A B has committed an offence punishable under Sect. 154 of the Indian Penal Code, and within, &c.

*Evidence.*

Sect. 154 is to meet the case of an unlawful assembly or a riot taking place on land, there being no connection between the cause of the assembly or riot and the owner of the land ; Sects. 155 and 156 provide for the case of a riot for the benefit of the owner of the land on which it takes place. To bring a defendant within the first of these sections, it will be necessary to prove that a riot or unlawful assembly did take place on land belonging to the defendant, either as owner or occupier, or in which he has or claims an interest. What interest is sufficient to support the charge is not defined, but it must be such an interest as will give the defendant a right to interfere in the management of the land, or to go upon it, else he might be punished for not suppressing the riot when he had no power to go upon the land for that purpose. The son of a tenant in tail under a marriage settlement, or the reversioner expectant upon the determination of a life estate, it is submitted, would not be persons having or claiming an interest in land under this section.

In the next place, it must be shown that the fact that the unlawful assembly or riot was about to take place, or was actually taking place, came to the knowledge of the defendant, or his agent or manager, either by direct proof, or by evidence from which the knowledge might be inferred. Then it must be proved that neither the defendant nor his agent or manager gave information to the principal officer at the nearest police station. This provision fixes definitively the officer to whom the information must be given, and makes the proof of this portion of the offence easy, which is not so in the case of a concealment of a design to wage war under Sect. 123. If, however, the defendant gave information to any officer at the police station, it could scarcely be said that he had not done what was required of him. Finally, it must be shown that neither the defendant, nor his manager or agent, used all lawful means in their power to prevent the assembly taking place, or, if it had already begun, to disperse or suppress it.—See *Reg. v. Surroop Chunder Paul*, 12 W.R. Crim. 75. The words of the section are very wide, sufficiently so to include such a case as the following : An unlawful assembly takes place on land unknown to the owner,

but known to, and perhaps aided and abetted by the owner's agent. The agent does not obey the directions of this section, and stop the unlawful assembly. Is the owner liable to fine? Under the strict letter of the section he is, but surely such could not have been the intention of the framers of the Code. In England, in the case of *Reg. v. Stephens*, 10 Cox Crim. Cases, 340, a man was made liable criminally for a nuisance committed by his servants; but the nuisance arose in the course of the defendant's trade, and had continued a long time, although the course of business which created the nuisance had been positively forbidden by him. It has also been held that an owner is punishable if his land is made filthy by other persons while it is in his occupation, but not if he has sublet it.—*Reg. v. Parbatty Churn Sirkar*, 3 W.R. Crim. 57. In the present case, however, the act or omission which constitutes the offence may be an isolated one, and unconnected with anything else, and the owner is supposed to be away from the land, and so to a certain extent not in occupation.

With respect to Sects. 155 & 156, the evidence will be very similar to that required to support a charge under Sect. 154. The defendant must have an interest in the land, &c., which, however, need not be so large as in the previous case, as the riot is assumed to be for his benefit; therefore, *any* interest will be sufficient. The riot, too, must be proved to have been committed with reference to some particular land, &c., and for the benefit of the owner of such land, &c. Under the latter of these two sections, the agent or manager is made liable as well as the owner.

#### *Harbouring Persons hired.*

**Sect. 157.** *Harbouring, &c., Persons hired for an unlawful Assembly.*—Whoever harbours, receives, or assembles in any house or premises in his occupation or charge, or under his control, any persons, knowing that such persons have been hired, engaged, or employed, or are about to be hired, engaged, or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

**Note.**—*Triable by a magistrate of the first or second class. A summons should issue in the first instance. Police officers may arrest without a warrant. Defendants are bailable.*

For Sect. 158, see p. 123.

## CHAPTER IX.

## OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

*Bribery.*

**Sect. 161.** *Public Servant taking illegal Gratification.*—Whoever, being or expecting to be a public servant accepts or obtains or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification other than legal remuneration, as a motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or dis-service to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

*Explanations.*—“Expecting to be a public servant.” If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

“Gratification.” The word “gratification” is not restricted to pecuniary gratifications, or to gratifications estimable in money.

“Legal remuneration.” The words “legal remuneration” are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government which he serves to accept.

“A motive or reward for doing.” A person who receives a grati-

fication as a motive for doing what he does not intend to do, or as a reward for doing what he has done, comes within these words.

*Illustrations.*

- (a) A, a moonsiff, obtains from Z, a banker, a situation in Z's banks for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed an offence defined in this section.
- (b) A, holding the office of resident at the court of a subsidiary power, accepts a lakh of rupees from the minister of that power. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that power. A has committed the offence defined in this section.
- (c) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

**Note.**—In the construction of this section, it is enacted by Act xxxi. of 1867, sects. 2, 3, that every officer and servant of a railway company is a public servant within the meaning of this section, and the word "Government" includes a railway company. And by the same Act, sect. 1, "Railway Companies," in that Act, means the proprietors for the time being of railways or tramways.

**Sect. 162.** *Taking a gratification, in order, by corrupt or illegal means, to influence a public Servant.*—Whoever accepts, or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant, to show favour or disfavour to any person, or to render or attempt to render any service or dis-service to any person with the Legislative or

Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Sect. 163.** *Taking a gratification for the exercise of personal influence.*—Whoever accepts, or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or dis-service to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

*Illustrations.*

An advocate who receives a fee for arguing a case before a judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust—are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

**Sect. 164.** *Punishment for abetment by public servant of the offences above defined.*—Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

*Illustration.*

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular

person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

**Sect. 165.** *Public Servant obtaining valuable thing without consideration.*—Whoever, being a public servant, accepts or obtains, or agrees to accept, or attempts to obtain, for himself or for any other person, any valuable thing, without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted, or about to be transacted by such public servant, or having any connection with the official functions of himself, or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

*Illustrations.*

- (a) A, a collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty rupees a-month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a-month. A has obtained a valuable thing from Z without adequate consideration.
- (b) A, a judge, buys of Z, who has a cause pending in A's court, Government promissory notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.
- (c) Z's brother is apprehended and taken before A, a magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing, obtained by him without adequate consideration.

**Note.**—Act xxxi. of 1867 extends the definition of public servant and Government.

By Sect. 466 of the Criminal Procedure Code, a complaint of an offence committed by a public servant, in his capacity as such public servant, of which any judge or any public servant not removable from his office without the sanction of Government, is accused as such judge or public servant, shall not be entertained against any such judge or public servant, except with the sanction or under the direction of the Local Government, or of some officer empowered by the Local Government, or of some court or other authority to which such judge or public servant is subordinate, and whose power so to sanction or direct such prosecution, the Local Government shall not think fit to limit or reserve.

*Offences under Sects. 161, 162, and 164 are triable by the Court of Session or a magistrate of the first class; those under Sect. 163 by a magistrate of the first class; and those under Sect. 165 by a magistrate of the first or second class. A summons is to be issued in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

#### *Evidence.*

The use of mere personal influence will not be sufficient to bring any person within these sections, nor any amount of persuasion. Influence must be accompanied by gratification, or must be the result of gratification. If persuasion were changed into threats, then that would constitute an offence under Sect. 189.

A person receiving "a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done," as described in the third explanation to Sect. 161, will not only have committed an offence under that section, but will also be guilty of cheating; in the latter case, by virtue of the definition of cheating given in Sect. 415—and in the former, by virtue of that definition, coupled with illustration *f*, annexed to Sect. 415.

"With reference to this class of cases, it will be well to quote from Lord Mansfield's judgment in the case of *Rex. v. Woodfall*, 5 Burrows, 2667, what he says as to intent: 'Where an act in itself indifferent, if done with a particular intent becomes criminal, there the intent must be proved and found; but, where the act is in itself unlawful, the proof of justification lies on the defendant, and in failure thereof, the law implies a criminal intent.'"

The definition of the word "judge" is given in Sect. 19, p. 22,



and that of "public servant" in Sect. 21, p. 22. Act xxxi. of 1867 extends the meaning of the words "Government and public servant" so as to include railway companies and railway servants respectively, so far as relates to Sects. 161 and 162.—See p. 133, 134. This provision was introduced in order to put a stop to the large amount of bribery which was constantly taking place among railway servants in respect of contracts, and work done under contracts, &c.

Where a complainant charged a person, who was one of the public servants mentioned in Sect. 446 of the Criminal Procedure Code, with committing acts which if committed by a private individual would have amounted to extortion, it was held that it was not illegal to treat the charge as one for extortion, and to proceed with the trial without having previously received the proper sanction for the prosecution, though it might have been more judicious to have treated it as an offence under Sect. 161 of the Penal Code, and obtained the necessary sanction. — Reg. v. Parshram Keshav, 7 Bomb. H.C. Rep. C.C. 61.

#### *Disobedience by Public Servants.*

**Sect. 166. *Disobedience by Public Servant with intent to cause Injury.***—Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely, that he will by such disobedience cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

#### *Illustration.*

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

**Sect. 167. *Framing incorrect Document.***—Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates

that document in a manner which he knows, or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Note.**—See Sect. 466 of the Criminal Procedure Code.

*Offences under Sect. 166 are triable by a magistrate of the first or second class; those under Sect. 167 by the Court of Session, or by a magistrate of the first class. Defendants are bailable. Police officers may not arrest without a warrant. A summons should issue in the first instance.*

### *Evidence.*

Prove that the defendant is a public servant, and that he did the act laid in the charge. Prove also that the act has done injury, or that it was likely to the knowledge of the defendant to do injury. If it is one which was likely to do injury the knowledge of the defendant may be inferred, especially if from his official position he ought to know what the result of his act would be likely to be. The injury must be within reasonable limits—the direct result of the act. Thus the mistranslation of a document, so as to convict a prisoner, would come within Sect. 167, as the conviction would be the immediate result of the act; but a mistranslation so as to acquit a prisoner would not, as the injury caused by the result to the Queen, the nominal prosecutor, or to the real prosecutor, would not be sufficiently direct and immediate. Such a case would be met by Sect. 218, *post*.

### *Public Servant Trading, &c.*

**Sect. 168. Public Servant engaging in Trade.**—Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

**Note.**—33 Geo. III., c. 52, s. 137. *Governor-General, &c., not to Trade.*—It shall not be lawful for any Governor-General, or Governor, or any Member of Council of the said Presidencies in India, to be concerned in any trade or traffic whatever, except on account of the said Company, nor for any collector, supervisor, or

other person employed or concerned in the collection of the revenues, or the administration of justice, in the provinces of Bengal, Behar, and Orissa, or either of them, or their agents or servants, or any person or persons in trust for them or any of them, to carry on or be concerned in, or to have any dealings or transactions, by way of traffic or trade, at any place within any of the provinces in India, or other parts, or to buy any goods, and sell the same again, or any part thereof, at the place where he or they bought the same, or at any other place within the same province, or any other such province or country respectively, except on account of the said Company.

**3 & 4 Will. IV. c. 85, Sect. 76. *Prohibition of Trading.***—It is hereby declared to be a misdemeanour for any such officer (Governor-General, Governors of the Presidencies of Fort Saint George, Bombay and Agra, Member of Council of India, and Member of Council of any Presidency) to accept for his own use, in the discharge of his office, any present, gift, donation, gratuity, or reward, pecuniary, or otherwise whatsoever, or to trade or traffic for his own benefit, or for the benefit of any other person or persons whatsoever.

**Act xv. of 1848, Sect. 1.** No officer of any of the Courts of Judicature established by Royal Charter within the territories subject to the Government of the East India Company, or of any court established for the relief of insolvent debtors, shall carry on trade or traffic.

**Act viii. of 1855, Sect. 49; and Act xxiv. of 1867, Sect. 10;** prohibit the Administrator-General from trading.

**Sect. 169. *Public Servant unlawfully bidding for Property.***—Whoever, being a public servant, and being legally bound, as such public servant, not to purchase, or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

**Note.**—See Sect. 466 of the Criminal Procedure Code.

*Offences under Sects. 168 and 169 are triable by a magistrate of the first class. Defendants are bailable. Police officers may not arrest without a warrant. A summons should issue in the first instance.*

*Charge of Trading.*

That you, on or about the       day of       , at       , being a public servant, to wit, Judge of the Zillah of       , and being as such public servant legally bound not to engage in trade, did engage in trade; and that you have thereby committed an offence punishable under Sect. 168 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove that the defendant was a public servant. The fact of his being prohibited to trade or to purchase certain property is a matter of which judicial notice will be taken by the courts, as it will appear from regulations or acts. A few of the prohibitory acts are given here, the remainder will be found scattered among the regulations in force in the three Presidencies, and in the Acts of the Governor-General in Council.

*Pretending to be a Public Servant.*

**Sect. 170. *Personating a Public Servant.***—Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 171. *Wearing Garb of Public Servant.***—Whoever, not belonging to a certain class of public servants, wears any garb, or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

**Note.**—*Triable by any magistrate. Police officers may arrest without a warrant. Defendants are bailable. A warrant should issue in the first instance under Sect. 170, and a summons under Sect. 171.*

*Evidence.*

The remarks on Sect. 140, p. 114, are also applicable to Sect. 171. If property be obtained by means of the assumed garb, it will be cheating, although nothing pass in words.—*R. v. Barnard*, 7 C. & P. 784; and the same will be the result if a person committing an offence under Sect. 170 obtains any property, or otherwise brings his acts within the definition of cheating.

## CHAPTER X.

### OF CONTEMPT OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

#### *Disobedience to Summons, &c.*

**Sect. 172.** *Absconding to avoid service of Summons.*—Whoever absconds in order to avoid being served with a summons, notice, or order proceeding from any public servant, legally competent as such public servant, to issue such summons, notice, or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both; or if the summons, notice, or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

**Sect. 173.** *Preventing service of Summons.*—Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice, or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order, or intentionally prevents the lawful affixing to any place of any such summons, notice, or order, or intentionally removes any such summons, notice, or order from any place to which it is lawfully affixed, or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both; or, if the summons, notice, order, or proclamation is to attend in per-

son or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

**Sect. 174.** *Non-attendance in obedience to an order from a Public Servant.*—Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both; or if the summons, notice, order, or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

*Illustrations.*

- (a) A, being legally bound to appear before the Supreme Court at Calcutta, in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.
- (b) A, being legally bound to appear before a Zillah Judge, as a witness, in obedience to a summons issued by that Zillah Judge, intentionally omits to appear. A has committed the offence defined in this section.

**Sect. 175.** *Omission to produce a Document.*—Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both; or if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

*Illustration.*

A, being legally bound to produce a document before a Zillah Court, intentionally omits to produce the same. A has committed the offence defined in this section.

**Note.**—By Sect. 467 of the Criminal Procedure Code, a complaint of any offence described in chapter x. of the Penal Code, not falling within Sects. 435 or 436 of this Act, shall not be entertained in any criminal court, except with the sanction or on the complaint of the public servant concerned, or of his official superior. The prohibition contained in this section shall not apply to the offences described in Sects. 189 and 190 of the Indian Penal Code.

Sects. 435 and 436 of Criminal Procedure Code provide for summary procedure in cases of offences under Sects. 175, 178, 179, 180, or 228 of the Penal Code.

*Subject to the above provisions, offences under Sects. 173 and 175 are triable by a magistrate of the first or second class, except under Sect. 175, in cases when the offence is committed in a court, and then by that court; offences under Sects. 172 and 174 are triable by any magistrate. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

*Charge of Absconding.*

That you, the said A B, on or about the                      day of                      , at                      , did abscond in order to avoid being served with a summons, to wit, to attend at                      , on the                      day of                      , proceeding from a public servant, legally competent as such public servant, to issue such summons, to wit, the Magistrate of the District of                      ; and that you, the said A B, have thereby committed an offence punishable under Sect. 172 of the Indian Penal Code, and within, &c.

*Evidence.*

Under Sects. 174 and 175 it must be shown that a summons, notice, or order has issued from some court or public servant authorised to issue it, or that a proclamation has been made by the proper authority, commanding the defendant to appear at a certain time and place, with or without a document.—*In re Shib Persad Chuckerbutty*, xvii. W.R. Crim. 38, Ruling, vii. Mad. H.C. Reps. xiv. It



must then be shown that the summons has been served upon him, or that the proclamation has come to his notice, and proof must be given that he was not present at the time and place mentioned in the summons or proclamation, or that, being present, he refused to deliver up the documents required. His omission to attend must be intentional, or his departure must be wilful—*in re Sutherland*, 14 W.R. Crim. 20; but if it is proved that a summons was served upon him, and that he understood it, and knew when and where to attend, his absence will be inferred by the court to be intentional, unless and until he can show it was accidental, or unless the circumstances adduced in evidence themselves show it to be such; but the court in these cases ought not to be hasty in drawing an inference unfavourable to the accused, but search for facts from which the intentional absence may be positively inferred. In the case of a refusal or omission to produce a document, he must have been served with a *subpœna duces tecum* to produce that document, or else be in court with the document in his possession, and must in either case be asked for it, and his refusal to produce it, or his not accounting for its non-production, will be evidence of intentional omission. If the case be one of a person who is bound by any general law to deliver any document or class of documents to a public servant, the mere omission to conform to the requirements of the law may amount to an intentional omission, but the surrounding circumstances must be very strong to justify a conviction, without a previous demand on the part of the person to whom it is to be delivered.

Under the old Code it was held that the mere showing of a summons to a witness is not a sufficient service; the original should be left with him, or else shown to him, and a copy left with him.—*Reg. v. Karsanalal Davatram*, 5 Bomb. H.C. Rep. C.C. 20. But now see Sect. 15 of the Crim. Pro. Code, under which exhibition of one and tender of another copy is sufficient. A witness was summoned to attend on a certain day to give evidence before the judge of a Small Causes Court; but before that day the case was postponed, and no fresh summons or notification of postponement was served upon the witness; consequently he did not attend when the case was heard, and was fined; but it was held that, not having been resummoned, the witness was not bound to attend.—*In re Sreenath Ghose*, 10 W.R. Crim. 33. The accused was summoned as a witness in a case to be heard on the 27th May. The summons was

not served personally on the accused, but affixed to the door of his house. On the appointed day the case was not taken up, but was adjourned by public proclamation till the 5th June, and on this latter day the accused failed to attend. There was no evidence that the summons had been brought to the knowledge of the defendant, so as to require him to attend on the first occasion, and it was held that there was no evidence of the commission of an offence under Sect. 174. It was also held that the adjournment of a case by proclamation is irregular, and that a magistrate ought to give special notice to the parties of the date to which a case is adjourned.—6 Madras H.C. Rep. App. 29.

If the summons be to attend *either in person or by agent*, greater care will be necessary in proving the intentional omission, as the party summoned may have instructed an agent, and the agent may have omitted to attend; and if an inferior servant of a court be refused permission to attend in answer to the summons of another court, that is not an intentional disobedience.—*In re* Sreenath Ghose, *ubi sup.*

Sect. 174 does not apply to the case of a defendant escaping from custody under a warrant in execution of a decree of a civil court.—Reg. v. Sirda Pathoo, 1 Bombay H.C. Rep. 38. Disobedience to a proclamation would be punishable under this section—1 R.C.C. Cr. 61; and an accused person who has forfeited his bail-bond may be proceeded against under this section, although his sureties have paid the amount of their recognisances—Reg. v. Tajmuddy Lahoree, 10 W.R. Crim. 4.

A magistrate may take cognisance of an offence under Sect. 174 committed against his own court.—Reg. v. Gugun Misser, 8 W.R. Crim. 61. But a *Mahalkari*, invested with the powers of a second-class subordinate magistrate, cannot issue a summons under Sect. 8 of Act XI. of 1843; and therefore a person cannot be convicted under Sect. 174 of the Penal Code for having disobeyed a summons so issued.—Reg. v. Venkaji Bhaskar, 8 Bomb. H.C. Rep. C.C. 19. Further, the chairman of a municipal commission, appointed under Act XXVI. of 1850, although a public servant, is not legally competent, as such, to issue an order for attendance before himself; consequently the disobedience of such an order is not an offence under this section.—Reg. v. Purshotam Valji, 5 Bomb. H.C. Rep. C.C. 33.

Under Sect. 173 the summons must have issued, and be about to be served, or the proclamation must be about to be made, in order to the commission of an offence, or else the summons, if not served personally, must have been affixed to some lawful place. In these cases the intentional nature of the act charged will be inferred from the act itself, and the mode in which it is done. The refusal by an accused person to sign a summons intended to be served upon him, does not constitute the offence of intentionally preventing the service of a summons on himself.—*Reg. v. Kalya bin Fakir*, 5 Bomb. H.C. Rep. C.C. 34.

Under Sect. 172 a question might arise, whether a person hearing that a summons was about to be applied for against him, and absconding before it was issued, would be guilty of an offence. Looking, however, to the fact that the absconding is an offence because it is a contempt of the lawful authority of a public servant, which of course cannot be contemned until it has been exercised, and also taking into consideration the words of the latter half of the section, the most reasonable construction is, that there must be some judicial action on the part of the public servant before this offence can be committed, such as an application to him for the issue of a summons, which he has granted. The statement by a magistrate that a summons might issue has been held equivalent to its actual issue, as far as respects an application, which must be made within a certain time in order to be acted on afterwards.—*Potts v. Cumbridge*, 27, L.J.N.S.M.C. 62. The last Master and Servant Act, 30 & 31 Vict. c. 141, avoids the difficulty which may arise under this section by enacting, in Sect. 8, that “If at any time *after the laying of the information or complaint* it appears to a Justice, Magistrate, or Sheriff, that the party complained against is about to abscond,” then a certain course may be taken. It must be shown that the defendant knew, or had suspicion that a summons was about to be served on him, or else some other circumstance must be proved to show that his going away was an absconding, and not a lawful journey. This section applies to the case of a *witness* who absconds to avoid service of a summons; and Sect. 354 of the Crim. Pro. Code extends it to the case of a *witness* who absconds to avoid service or execution of a warrant.—*Reg. v. Hossein Manjee*, 9 W.R. Crim. 70.

By the Criminal Tribes Act, 1871, xxvii. of 1871, Sect. 9, any

member of any such tribe, gang, or class who, without lawful excuse, the burden of proving which shall lie upon him, shall fail to appear according to such notice, or who shall intentionally omit to furnish such information, or who shall furnish, as true, information on the subject which he knows, or has reason to believe, to be false, shall be deemed guilty under the first parts of Sects. 174, or 176, or 177 of the Indian Penal Code respectively, as the case may be.

*Omission to give Information, &c.*

**Sect. 176.** *Omission to give Notice or Information.*—Whoever, being legally bound to give any notice, or to furnish any information on any subject to any public servant, as such, intentionally omits to give such notice, or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine, which may extend to five hundred Rupees, or with both ; or if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine, which may extend to one thousand Rupees, or with both.

**Sect. 177.** *Furnishing False Information.*—Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows, or has reason to believe, to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, which may extend to one thousand Rupees, or with both ; or, if the information which he is legally bound to give, respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Illustrations.*

- (a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by

accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

- (b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound under Clause 5, Sect. vii. Regulation iii., 1821, of the Bengal Code, to give early and punctual information of the above fact to the nearest Police Station, wilfully misinforms the Police Officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in this section.

**Note.**—See Sects. 435, 436, and 467 of the Criminal Procedure Code. *Triable by a magistrate of the first or second class. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

#### *Evidence.*

The legal obligation to furnish information arises under various Acts relating to the public revenue, as, for instance, the Income-Tax Act, which requires returns to be made, information to be furnished, &c. So also the Registration Act No. viii. of 1871, Sect. 82, provides that every person shall be legally bound to furnish information as to the execution, &c., of documents tendered for registration to the registering officer when required so to do. Other laws also require persons to give notice of various matters to public servants. Sect. 89 of the Criminal Procedure Code, for instance, requires all persons to give information of certain offences there specified. Such laws as those last mentioned will often be found to be excepted from the operation of the Penal Code by the 5th Section, as being special or local laws not coming within the meaning of the word offence, as defined by the Penal Code, Sect. 40.

The latter portion of these two Sections, 176 and 177, may include many acts which are similar to those provided for by Sects. 118-120, p. 95, 96.

A Karnam is a private person in respect of Sect. 176 and Sect. 202, there being no law binding him in any special way to report or prevent crime; he is therefore not punishable for not reporting

the commission of a crime not enumerated in Sect. 89 of the Criminal Procedure Code.—Madras H.C., 12th March 1867, 2 Madras Jurist, 289. Sect. 177 does not apply to the case of *any person* who, examined by a police officer, makes a false statement, but only to cases where, by law, landholders or village watchmen are bound to give information, and to other analogous cases.—Reg. v. Lukhee Singh, 12 W.R. Crim. 23.

A village Moonsif is bound by Sect. 12 of Reg. xi. of 1816, which provides that “heads of villages shall reciprocally communicate any information which they may receive of offences committed; . . . and shall co-operate in all things for the apprehension of the offenders, and the general security of the country;” and is therefore bound to report all offences although not enumerated in Sect. 89 of the Criminal Procedure Code.—Madras H.C., 12th March 1867, 2 Madras Jurist, 289. Certain vaccinators were charged with making false returns to their official superiors, and the returns were found, as a fact, to have been false. It was held that Sect. 177 embraces every case in which a subordinate may seek to impose false information upon his superior. The defendants were public servants, and part of the duties they undertook was to make true returns to their official superiors; to make false returns was therefore an offence.—Madras H.C., 21st December 1871; 6 Madras H.C. Rep. App. 48.

A man named Yesu gave the accused four annas with which to purchase for him (Yesu) a stamp. When the stamp-collector asked the accused for his name, he said, “Yesu,” instead of giving his own name. It was held that this amounted to the offence of giving false information under Sect. 177, and was not cheating by personation.—Reg. v. Raghoji bin Kanoji, 3 Bombay H.C. Rep. C.C. 42. See Note to Sect. 174 on the Criminal Tribes Act.

### *Refusing to take Oath, &c.*

**Sect. 178. Refusing to take Oath.**—Whoever refuses to bind himself by an oath to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

**Note.**—It is enacted by Sect. 15 of the Indian Oaths Act, x. o

1873, that this section and Sect. 181 are to be construed as if after the word "oath" the words "or affirmation" were inserted.

**Sect. 179. *Refusal to answer Questions.***—Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

**Sect. 180. *Refusal to sign Statement.***—Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.

**Note.**—See Sects. 435, 436, and 467 of the Criminal Procedure Code. *Triable by the court in which the offence is committed, subject to the provisions of Chap. xxxii. of the Criminal Procedure Code, or if not committed in a court, by a magistrate of the first or second class. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

### *Refusal to take Oath.*

#### *Charge.*

That you, on or about the                      day of                      , at                      , having been required to bind yourself by an oath to state the truth by                      , a public servant legally competent to require you so to bind yourself, did refuse so to bind yourself; and that you have thereby committed an offence punishable under Sect. 178 of the Indian Penal Code, and within, &c.

### *Refusal to answer Questions.*

That you, on or about the                      day of                      , at                      , being legally bound to state the truth on a certain subject, to wit,                      , to a certain public servant, to wit,                      , did refuse to answer a certain question demanded of you by such public servant in the exercise of the legal powers of such public servant; and that you have thereby committed an offence punishable under Sect. 179 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove the tendering of the oath, the demand of the question, or the requirement of the signature, as the case may be. The mere omission on the part of any person to do any one of these acts is not punishable; there must have been a positive refusal, which necessitates a previous demand, before a conviction can take place. The power of a public servant to require the doing of such acts is fixed by public authority, and will therefore, in most cases, be a matter of which the court will take judicial notice.

*False Statement on Oath.*

**Sect. 181. *False Statement on Oath.***—Whoever, being legally bound by an oath to state the truth on any subject to any public servant or other person authorised by law to administer such oath, makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false, or does not know to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**Note.**—It is enacted by Sect. 15 of the Indian Oaths Act, x. of 1873, that this section and Sect. 178 are to be construed as if after the word “oath” the words “or affirmation” were inserted. —See Sects. 435, 436, and 467 of the Criminal Procedure Code. *Triable by the Court of Session or magistrate of the first class. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

*Charge.*

That you, on or about the                      day of                      , at                      , being legally bound by an oath to state the truth on a certain subject, to wit,                      , to a public servant (or person) authorised by law to administer such oath, to wit,                      , did make to such public servant (or person) as aforesaid, touching that subject, a statement which was false, and which you knew at the time you so made it was false, to wit,                      ; and that you have thereby committed an offence punishable under Sect. 181 of the Indian Penal Code, and within, &c.



*Evidence.*

The evidence under this section will be the same as that under Sect. 193, except that the false statement need not be made in the course of a judicial proceeding. The word oath is defined in Sect. 51, p. 31.

A person is not legally bound to state the truth, where the officer who administers the oath is trying a case wholly beyond his jurisdiction.—*Reg. v. Andy Chetty*, 2 Madras H.C. Rep. 438.

Where a false statement is made in a stage of a judicial proceeding, the accused ought not to be convicted by a magistrate under this section, but ought to be committed for trial to the Court of Session, and a conviction under this section is illegal.—*Reg. v. Nusurooddeen Shazwall*, 11 W.R. Crim. 24; *Reg. v. Dayalji Endarji*, 8 Bomb. H.C. Rep. C.C. 21. See also *In re Nuthoo Kumall*, *ib.* 22; and *Reg. v. Heeramun Singh*, 8 W.R. Crim. 30. The High Court at Madras, however, on the 4th November 1868, ruled that a conviction under this section was good, although the offence fell under Sect. 193.—4 Madras H.C. Rep. App. 18.

The making of a false return on oath of a service of a summons comes under Sect. 193, and not under this section—*Reg. v. Shama Churu Roy*, 8 W.R. Crim. 27: so does also a false statement made on solemn affirmation before an Income-Tax Commissioner, as it is a statement in a judicial proceeding under the Income-Tax Act 1870—*Reg. v. Dayalji Endarji*, 8 Bomb. H.C. Rep. C.C. 21.

A sentence under this section which awards no imprisonment is illegal.—4 Madras H.C. Rep. App. 18.

*False Information.*

**Sect. 182.** *False information with intent to cause injury.*—Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit, if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, which may extend to one thousand Rupees, or with both.

*Illustrations.*

- (a) A informs a Magistrate that Z, a Police Officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.
- (b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

**Note.**—See Sects. 435, 436, and 467 of the Crim. Pro. Code.

*Triable by a magistrate of the first or second class. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

Where A, out of malice to B, gives to C, a public servant, false information, intended to injure B, a public servant under C, B cannot prosecute A criminally without C's consent.—*In re Moulvy Mahomed Abdool Luteef*, 5 R.C.C. Cr. 37, and 9 W.R. Crim. 31. See also notes to Sect. 211, *post*, p. 184.

*Obstruction of and Omission to assist Public Servant.***Sect. 183.** *Resistance to the taking of property by public Servant.*

—Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, which may extend to one thousand Rupees, or with both.

**Sect. 184.** *Obstructing Sale of Property by authority of a public Servant.*—Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine, which may extend to five hundred Rupees, or with both.

**Sect. 185.** *Illegal purchase of or bid for Property.*—Whoever, at

any sale of property held by the lawful authority of a public servant as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property, not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine, which may extend to two hundred Rupees, or with both.

**Sect. 186. Obstructing Public Servant in discharge of his public functions.**—Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.

**Sect. 187. Omission to assist public Servant.**—Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine, which may extend to two hundred Rupees, or with both ; and if such assistance be demanded of him by a public servant, legally competent to make such demand, for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred Rupees, or with both.

**Note.**—See Sects. 435, 436, and 467 of the Crim. Pro. Code.

*Triable by a magistrate of the first or second class. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

Resistance to the taking of any property by a public servant, is only punishable when the taking is by lawful authority, and when the defendant knows or has reason to believe that the taking is by or by order of a public servant.—But see the case of *Reg. v. Vyankatray Shriniva*, 7 Bomb. H.C. Rep. C.C. 50.

An obstruction, to be an offence, must have been caused volun-

tarily within the definition contained in Sect. 39, *ante*, p. 29. Escaping from custody is not obstructing a public servant in the discharge of his public functions under Sect. 186.—*Reg. v. Poshu bin Dhambaji Patil*, 2 Bombay H.C. Rep. 134.

The resistance of the process of a civil court is punishable under Sect. 186 by a court of criminal jurisdiction—*Reg. v. Bhagai Dafadar*, 2 Ben. L.R.F.B. 21, and 10 W.R. Crim. 43; overruling *Reg. v. Chandra Kant Chuckerbutty*, 9 W.R. Crim. 63, in which it had been held that a magistrate had not jurisdiction to fine for resistance to the process of a civil court, but the civil court only. The case of *Reg. v. Bhagai Dafadar* has been followed in that of *In re Mani Chandra Doss*, 2 Ben. L.R.A.C.J. 188. If a bailiff break the doors of a third person to execute a decree against a judgment debtor he is a trespasser, if it turn out that neither the person nor the goods of the debtor are in the house, and, under such circumstances, the owner of the house does not, by obstructing the bailiff, render himself liable to punishment under Sect. 183 or 186.—*Reg. v. Gazi kom Aba Dore*, 7 Bomb. H.C. Rep. C.C. 83. Nor is a cart-owner liable under Sect. 186 for refusing to give his cart on hire to a Government officer.—*Reg. v. Dhori Kullan*, 9 Bomb. H.C. Rep. 165.

Public servants unlawfully buying or bidding for property are punishable under Sect. 169, *ante*, p. 140. A mock bidding for a lease of a ferry put up for sale by auction by a magistrate, has been held to come under Sect. 185.—5 R.J. and P. 38.

*Quære*, whether a Mouzadar is a public servant.—*Reg. v. Soorjaram*, 8 W.R. Crim. 66.

Assaulting or causing hurt to a public servant in the discharge of his duty is punished by Sect. 152, p. 127; threatening a public servant, by Sect. 189, p. 158; and insulting or interrupting him in a judicial proceeding, by Sect. 228, p. 202.

Persons bound to furnish information to public servants, and not doing so, bring themselves within Sects. 176, 177, p. 148.

As to the meaning of the word "offence" in Sect. 187, see Sect. 40, p. 30.

### *Disobedience of Order of Public Servant.*

**Sect. 188.** *Disobedience to an Order duly promulgated by a Public Servant.*—Whoever, knowing that, by an order promulgated by a

public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred Rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

*Explanation.*—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce harm.

*Illustration.*

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

**Note.**—See Sects. 435, 436, and 467 of the Crim. Pro. Code.

*Triable by a magistrate of the first or second class. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

*Evidence.*

Before a conviction can be had under this section, it must be shown that the accused knew that an order had been promulgated by a public servant directing such accused to abstain from a certain act.—*Reg. v. Ramtonoo Singh*, 12 W.R. Crim. 49. A conviction under this section will not stand when there is no evidence to show that the disobedience has caused, or tends to cause, obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any person lawfully employed, or that it caused, or tended to

cause, a riot or affray, or danger to human life, health, or safety.—Madras H.C. Ruling, 16th March 1868, 4 Madras H.C. Rep. App. 5 ; and Reg. v. Nandkumar Bose, 3 Ben. L.R. App. 149.

This section does not justify a magistrate in interfering with the exercise by a landholder of any of his civil rights, merely because such exercise might require vigilance on the part of the police, and might, in the absence of such vigilance, lead to an affray ; and it has been held, under this section, that an order prohibiting a Zamindar from holding a market upon his estate, was not a legal order.—5 R.J. and P. 155.

The wording of this section, as to the description of punishment to be awarded to each class of offences, is so clear that one would have supposed that no magistrate could go wrong. Nevertheless, the High Court of Bombay have had to decide that rigorous imprisonment can only be awarded in cases coming within the terms of the latter part.—Reg. v. Ratanrav bin Mahadevray Chavan, 3 Bombay H.C. Rep. C.C. 32.

*Threat of Injury to Public Servant, &c.*

**Sect. 189.** *Threat of injury to a public Servant.*—Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 190.** *Threat of injury to any other Person.*—Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury, to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**Note.**—See Sects. 435, 436, and 467 of the Crim. Pro. Code.

*Triable by a magistrate of the first or second class. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

## CHAPTER XI.

## FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

*False Evidence.*

**Sect. 191. *False evidence.***—Whoever, being legally bound by an oath, or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.

*Explanation 1.*—A statement is within the meaning of this section, whether it is made verbally or otherwise.

*Explanation 2.*—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

*Illustrations.*

- (a) A, in support of a just claim which B has against Z for one thousand Rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.
- (b) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.
- (c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting

of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

- (d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.
- (e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

**Sect. 192. *Fabricating False Evidence.***—Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry, or false statement, may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry, or false statement, so appearing in evidence, may cause any person, who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said “to fabricate false evidence.”

### *Illustrations.*

- (a) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.
- (b) A makes a false entry in his shop book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.
- (c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in



such criminal conspiracy, and puts the letter in a place which he knows that the officers of police are likely to search. A has fabricated false evidence.

**Sect. 193. *Punishment for False Evidence.***—Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

*Explanation 1.*—A trial before a Court-Martial or before a Military Court of Request is a judicial proceeding.

*Explanation 2.*—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

*Illustration.*

A, in an inquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this inquiry is a stage of a judicial proceeding, A has given false evidence.

*Explanation 3.*—An investigation directed by a Court of Justice, according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

*Illustration.*

A, in an inquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this inquiry is a stage of a judicial proceeding, A has given false evidence.

**Note.**—By Act vi. of 1864, Sect. 4, for a second offence under Sects. 193, 194, 195, whipping may be added as a punishment.

**Sect. 194.** *Giving, &c., False Evidence to convict of a Capital Offence.*

—Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by this Code (or by the law of England), shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

**Note.**—The words “or by the law of England” in Sects. 194 and 195, were introduced by Act xxvii. of 1870, Sect. 7. See also note to Sect. 193.

**Sect. 195.** *Giving, &c., False Evidence to convict of Offence Punishable with Transportation, &c.*—Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause any person to be convicted of an offence which by this Code (or by the law of England) is not capital, but punishable with transportation for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

*Illustration.*

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A therefore is liable to such transportation or imprisonment, with or without fine.

**Note.**—See notes to Sects. 193, 194.

**Sect. 196.** *Using Evidence known to be False.*—Whoever corruptly uses, or attempts to use, as true or genuine evidence, any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

**Sect. 197.** *Issuing or signing a False Certificate.*—Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing, or believing, that such certificate is false in

any material point, shall be punished in the same manner as if he gave false evidence.

**Sect. 198.** *Using as a true Certificate one known to be false in a Material Point.*—Whoever corruptly uses, or attempts to use, any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

**Sect. 199.** *False Statement in Declaration receivable as Evidence.*—Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

**Sect. 200.** *Using as true any such Declaration.*—Whoever corruptly uses, or attempts to use, as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

*Explanation.*—A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of Sects. 199 and 200.

**Note.**—See Sect. 468 of the Criminal Procedure Code.

*Offences under Sects. 194 and 195 are triable by the Court of Session; those under Sects. 193 and 196-200 by the Court of Session or a magistrate of the first class. A warrant may be issued in the first instance. Police officers may not arrest without a warrant. Defendants are bailable, except in cases under Sects. 194 and 195, when they are not bailable, and under Sect. 196, when the question of bail depends upon whether the offence of giving the evidence referred to is bailable or not.*

#### *Charge.*

That you, the said A B, on the                      day of                      , being summoned as a witness in                      , being a judicial proceeding then pending before the                      , and being bound by an oath to state the truth, intentionally gave false evidence by knowingly and falsely stating that you had seen one Mooljee sign a certain document marked A, whereas in truth, and in fact, you had not seen the

said Mooljee sign the said document, and that you, the said A B, have thereby committed an offence punishable under Sect. 193 of Indian Penal Code, and within, &c.

*Evidence.*

In the preceding sections there are three principal heads under which offences relating to false evidence are classed. 1. Giving false evidence, or using false or fabricated evidence; 2. Fabricating false evidence; 3. Issuing or making a certificate or declaration in which there is a false statement.

False evidence given in the course of a judicial proceeding need not be in respect of a material point, and therefore an indictment for giving false evidence, although it does not allege the materiality of the matter charged as false, is good if it allege sufficiently the subject-matter of the offence.—Reg. v. 'Airdus Sahib, 1 Madras H.C. Rep. 38; Reg. v. Mahomed Hossein, 16 W.R. Crim. 37; Reg. v. Shib Prosad Giri, 19 W.R. Crim. 69: but the averment that he *intentionally* gave false evidence—*i.e.*, that he gave false evidence with the direct and express intention of deceiving—is very material,—2 W.R.C.L. 11; Reg. v. Maharaj Messer, 7 Ben. L.R. App. 66; and see also Reg. v. Mahomed Hossein, *ubi sup.*: and must be proved at the trial,—Reg. v. Denonath Bujjur, 9 W.R. Crim. 52; Reg. v. Sidhoo, 13 W.R. Crim. 56. If the charge be one of fabricating false evidence, it must be charged and proved that it may cause some one "to form an erroneous opinion touching any point material to the result;" and in false declarations and certificates the falsity must be in some material point.—See Reg. v. Damodhar Ramchandra Kulkarni, 5 Bomb. H.C. Rep. C.C. 68.

If a witness be asked whether goods were paid for on a certain day, and he answer in the affirmative, if the goods were really paid for, though not on that day, it will not be perjury under the English law, 2 Rol. Rep. 41, 42, unless the day be material. So if a man swear that J. S. beat another with a sword, and it turn out that he beat him with a stick, this is not perjury, for all that was material was the battery.—Hetley, 97; see 1 Hawk. c. 69, s. 8. But perjury may be assigned upon a man's testimony as to the credit of a witness.—2 Salk. 514. So every question in cross-examination which goes to the witness's credit (as, whether he has before been convicted of felony—Reg. v. Lavey, 3 C. and K. 26) is material for

this purpose.—Reg. v. Overton, 2 Wood. C.C. 263. So where an *alibi* is being proved, it may be material to inquire where the witness was sleeping on certain nights, with a view to show, in contradiction to his testimony, that he was in prison at the time he said he was at home.—Reg. v. Tyson, Central Criminal Court, 13th June 1867. Evidence of the payment of money by the putative father of a bastard child within twelve months before the issuing of an affiliation summons against him on the hearing of the summons is material.—Reg. v. Berry, 1 Bell, C.C. 46. The question of materiality may sometimes be for the jury, or the court as a jury; as where the assignment of perjury, alleged to have been committed on the hearing of an affiliation summons against the defendant, was in his swearing “that he had never kissed” the prosecutrix.—Reg. v. Goddard, 2 F. and F. 361. Where a prisoner charged with robbery before a magistrate, having cross-examined the prosecutor as to whether he had not, the day before that of the alleged robbery, met him (the prisoner) in company with M, and proposed to him to commit a burglary, and the prosecutor having denied this, the prisoner called M to prove it; it was held that M’s evidence was not material to the issue, so as that it could be made the subject of an indictment for perjury.—Reg. v. Murray, 1 F. and F. 80.

The matter sworn must be proved; and it must also be proved that the defendant stated it.—Reg. v. Denonath Bujjur, 9 W.R. Crim. 52; Reg. v. Sidhoo, 13 W.R. Crim. 56. If in writing, and in existence, it must be produced. Upon proof that the writing has been lost or destroyed, secondary evidence may be given of its contents, and of the defendant’s signature to it.—Reg. v. Milnes, 2 F. and F. 10.

If the false evidence were given at a trial, or in the course of a judicial proceeding, it must be proved that such a trial did take place, or that there was such a judicial proceeding—Reg. v. Fatik Biswas, 1 Ben. L.R.A. Cr. J. 13; and the charge should show not only the judicial proceeding in which the prisoner is accused of having given false evidence, but the particular stage of the proceeding at which the evidence was given—*ib.* 15. The proper way to prove that the judicial proceeding took place is to produce the record thereof.—*ib.* 15 S.C. *sub nom.*; Reg. v. Futteali Biswas, 10 W.R. Crim. 37. This case was followed in Reg. v. Maharaj Misser,

7 Ben. L.R. App. 66, and 16 W.R. Crim. 47. Where a summons was granted upon an information, and upon the hearing of the summons the perjury assigned was committed, and at the trial the information was produced, but not the summons, it was held that the information was not sufficient, but that the summons ought to have been produced.—*Reg. v. Whybrow*, 8 Cox, C.C. 438. So, too, where a defendant was indicted for perjury alleged to have been committed on the hearing of an affiliation summons, it was held that to support the indictment it was necessary to give evidence of the charge made by the mother, either by producing the original order made thereon, or by giving secondary evidence of the summons after notice to produce it; and that, in the evidence of such notice, it was not sufficient to produce the minutes of the proceedings by the clerk of the justices, those minutes being of no greater authority than the notes of a shorthand writer.—*Reg. v. Newall*, 6 Cox, C.C. 21. On the trial of an indictment for perjury alleged to have been committed before magistrates, on the hearing of a case punishable on summary conviction, the conviction by the magistrates is not receivable in evidence, because it is irrelevant.—*Reg. v. Goodfellow*, Car. and M. 569.

The evidence the defendant gave upon the trial must then be proved by the testimony of some person who was present. It is sufficient for this purpose, if the witness state from recollection the evidence the defendant gave, though he did not take it down in writing, and cannot say with certainty that it was all the evidence given by the defendant, if he can say with certainty that it was all he gave on that point, and that he said nothing to qualify it.—*R. v. Rowley*, 1 Mood, C.C. 111; *R. v. Munton*, 3 C. and P. 498. It is not necessary to produce the judge's notes if the words spoken by the accused can be established by witnesses present at the trial—*Reg. v. Morgan*, 6 Cox, C.C. 107: for the notes of evidence taken by a judge in a trial are not admissible in evidence to prove what was said at that trial—*Reg. v. Child*, 5 Cox, C.C. 197; though any notes taken at the trial may be used to refresh the memory of the person who took them, and may also be used as corroborative evidence to support the testimony of the witness. If, however, the law requires that certain evidence should be taken down, or recorded in a particular manner, then that record ought to be in court, and be used at any rate for the purpose of refreshing the memory of the

person who took it down, who is of course the fittest person to testify as to what the defendant said on the occasion. The failure of the civil court to make a note or memorandum of the evidence of the accused given before it does not vitiate the depositions, if the evidence itself was duly recorded in the language in which it was given in such court.—*Reg. v. Beharee Lall Bose*, 9 W.R. Crim. 69. The knowledge of the Sessions Judge of the handwriting of a judicial officer, before whom a statement was alleged to have been made, which signature was attached to a deposition, is no evidence of a statement contained in that deposition having ever been made.—*Reg. v. Fatik Biswas*, *ubi supra*. So, too, the evidence of a writer in the Judicial Commissioner's office, to the effect that "the document shown to him (the deposition of the accused) is a deposition taken before the Assistant Commissioner; it appears to have been taken in due form and upon solemn affirmation, and is attested by the signature of the Assistant Commissioner," is not sufficient evidence of the prisoner having duly deposed.—*Reg. v. Mati Khowa*, 3 Ben. L.R.A. Cr. J. 36, and 12 W.R. Crim. 31.

The whole of the evidence ought to be read, not merely the few words charged as false evidence, as it is quite possible that there may be something in another part of the evidence which materially modifies the words charged, so as to show that they are not false. In England it has been held that if the perjury has been committed at the trial of a cause, the prosecutor must prove all the evidence given by the defendant (*Reg. v. Jones, Peake*, 37), or at any rate all the evidence given by the defendant referable to the fact on which the perjury is assigned (*Reg. v. Rowley, R. and M.* 299), unless the point upon which the perjury is assigned arose upon the defendant's cross-examination.—*Reg. v. Dowlin, Peake*, 170.

Before the passing of the Oaths Act, it was held that it must be proved that the defendant was sworn, or put under an obligation to speak the truth, similar to that of an oath; or that there was some express provision of law requiring him to speak the truth. And where a witness was at the beginning of the day solemnly affirmed once for all to speak the truth in all causes coming before the court on that day, it was held that he could be convicted of giving false evidence in a suit which came on that day, although he was not affirmed to speak the truth in that suit after it was called on for hearing, and the names of the cases in the day's list were not men-

tioned when the affirmation was administered.—Reg. v. Venkatachalam Pillai, 2 Madras H.C. Rep. 43.

And that native or other witness who professes the Christian religion must be put under the sanction of an oath upon the Holy Gospels, in order that he may be charged with the offence of giving false evidence. An affirmation under Act v. of 1840 is not sufficient, as that Act applies only to those who are Hindoos and Mahommedans both by birth and religion.—Reg. v. Vedamootoo, 4 Madras H.C. Rep. 185, and 4 Madras Jur. 71.

But now, by Sect. 13 of the Oaths Act x. of 1873, “No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding, or render inadmissible any evidence whatever in or in respect of which such omission, substitution, or irregularity took place, *or shall affect the obligation of a witness to state the truth.*” And it has been held by a full bench ruling at Calcutta, Jackson, J., dissenting, that the word “omission” includes *any* omission, and is not confined simply to accidental or negligent omissions.—Reg. v. Sewa Bhogta, 23 W.R. Crim. 12. Thus it would appear that in cases where formerly it was necessary to prove the defendant had been sworn, or put under an obligation to speak the truth, such proof is now unnecessary, the above section of the Oaths Act being an express provision of law, obliging the defendant in such cases to speak the truth.

Sect. 191 includes all cases in which a party is expressly bound to make a statement, and a true statement; but it does not apply to merely voluntary statements, such as form the basis of a contract, nor to false statements in a complaint to the police.—2 R.J. and P. 25. It is not necessary, however, that these statements be made in a court of justice to come under the section as false evidence.

The practice in the high courts is to set out the substance, and as nearly as possible the very words of the statement which is charged as false. Where the charge did not distinctly set forth the statement which was alleged to be false, but it appeared that the prisoners perfectly understood on their trial what was the alleged false statement, and had not been prejudiced on the trial in their defence by the defective form of the charge, the court refused to interfere.—4 R.J. and P. 359; R. v. Boodhun Ahir, 17 W.R. 32. But the



High Court of Bengal has directed that in all committals under Sects. 193-195, the particular statements on which perjury is assigned should be invariably inserted in the charge.—1 R.C.C. Circ. 15, 16. It has since been ruled that charges of giving false evidence should contain a distinct assertion with regard to *each* statement intended to be characterised as false; that it was made; that it is untrue in fact; and that the accused knew it was so when he made it.—Reg. v. Kalichurn Lahoree, 9 W.R. Crim. 54. See also *In re Dowlut Moonshee*, 8 W.R. Crim. 95; Reg. v. Feojdar Roy, 9 W.R. Crim. 14; and Reg. v. Boodhun Ahir, 17 W.R. Crim. 32. Where six prisoners were charged in the same charge, as follows: "That you, on or about the                      day of June,                      , at Tajpur, committed the offence of voluntarily giving false evidence in a stage of a judicial proceeding, and that you have thereby," &c.; it was held that the charge was bad and defective,—*firstly*, as it charged a number of persons jointly with giving false evidence; *secondly*, as it did not show what statements the accused persons made; *thirdly*, as it did not mention the day and year when the alleged offence was committed; *fourthly*, because it did not indicate the court or officer before whom the false evidence was given.—Reg. v. Maharaj Misser, 7 Ben. L.R. App. 66, and 16 W.R. Crim. 47. In the case of Reg. v. Kureem, 11 W.R. Crim. 42, it was also held that the commitment and trial together of several persons who are charged with having given false evidence in the same proceeding should not be allowed; and that although prisoners may be committed together, the Court of Session has power to try them separately, and under the above circumstances should do so. Each act of giving false evidence by different persons, although in the course of the same judicial proceeding, is a separate offence, and a separate charge must necessarily be framed against each prisoner, and a separate trial must be held of each charge.—Madras H.C., 15th March 1867, 2 Madras Jurist, 290; Reg. v. Khoab Lall, 9 W.R. Crim. 66; Reg. v. Bhavanishankar Haribhai, 5 Bomb. H.C. Rep. C.C. 55. But the making of any number of false statements in the same deposition is one aggregate case of giving false evidence; and charges of false evidence cannot be multiplied according to the number of false statements. These are merely evidences of the offence; and testing the matter by the law of evidence, it is manifest that the whole deposition must be looked at, and, if necessary, one part qualified

by the other.—Madras H.C., 1st May 1871, 6 Madras H.C. Rep. App. 27.

To prove that the person who administered the oath had authority to do so, it is merely necessary to prove that he performed the duties of a certain office, without showing his appointment—*R. v. Verelst*, 3 Camp. 432; and (if the court will not judicially notice it) that the person lawfully exercising the duties of that office has authority to administer an oath.

The Penal Code gives no definition of what is meant by “a stage of a judicial proceeding,” but only cites a few instances. The definition of a judicial proceeding is, however, given in Sect. 4 of the Criminal Procedure Code. Under the English law, the following decisions have taken place as to what is false swearing in a judicial proceeding: If a defendant swear falsely when examined as a witness upon a trial, or in an answer to a bill in equity—5 Mod. 348; 3 Inst. 166; or in depositions in a court of equity—5 Mod. 348, or in an affidavit in the Courts of Queen’s Bench, Common Pleas, &c.—1 Rol. Rep. 79, *per* Coke, C.J.; or upon a commission for the examination of witnesses—Cro. Car. 99; or in justifying bail in any of the courts; or upon an examination before a magistrate; or in a judicial proceeding in a court baron—5 Mod. 348; 1 Mod. 55, *per* Twisden, J.; or ecclesiastical court—5 Mod. 348; or any other court, whether of record or not—see 1 Hawk. c. 69, s. 3; also before a local marine board acting under 17 & 18 Vict. c. 104, s. 241—*Reg. v. Tomlinson*, 12 Jur. N.S. 945—it has been held to be in the course of a judicial proceeding. An inquiry into the income of a person under the Income Tax Act, 1870, is by that Act a judicial proceeding.—*Reg. v. Dayalji Endarji*, 8 Bomb. H.C. Rep. C.C. 21. The matter in which the false evidence is given must be within the jurisdiction of the person before whom it is sworn, or else it is not given in a judicial proceeding.—See *Reg. v. Andy Chetty*, 2 Madras H.C. Rep. 438; and *ante*, p. 153. A *femme sole* having recovered judgment in a county court, afterwards married, and subsequently to her marriage issued a judgment summons out of the London Small Debts Court, within the jurisdiction of which the defendant was living. The judgment summons was headed as in the plaint note in the County Court, and, objection being made on behalf of the defendant, the judge amended it by striking out the name of the original plaintiff, and substituting the

names of her husband and herself as joint plaintiffs. The defendant was then examined, and at the conclusion of his evidence the judge ordered him to be prosecuted for perjury, on which charge he was afterwards tried and found guilty. On reference to the Court of Criminal Appeal, it was held that the amendment was not within the jurisdiction of the judge, and that there being no cause in the altered name, the conviction could not be supported.—*Reg. v. Pearce*, 9 Jur. N.S. 647. The accused was convicted of intentionally giving false evidence in a judicial proceeding. The proceedings at the trial at which the alleged false evidence was given were subsequently set aside in consequence of the sanction for the prosecution not being sufficient; and it was held that the conviction of the accused must be reversed, as the alleged false evidence was not given in a judicial proceeding.—*Reg. v. Ravji valad Taju*, 8 Bomb. H.C. Rep. C.C. 37. A made an application for a new trial under Sect. 21 of Act xi. of 1865, and filed a memorandum of his grounds, verified as a plaint, which is not required by the Act, and therein knowingly made a false statement; but it was held that he had not committed an offence under either Sect. 191 or 192, as the false statement was not made in the course of a judicial proceeding.—*In re Haran Mandal*, 2 Ben. L.R.A. Cr. J. 1; and 10 W.R. Crim. 31.

It next is necessary to consider what must be proved in respect to the falsity of the alleged evidence, and the knowledge and belief of the accused in respect thereof. In the case of *Reg. v. Ahmed Ally* (11 'Weekly Reporter,' Crim. 27), Norman, J., in delivering judgment says: "It appears to us that the true rule is that no man can be convicted of giving false evidence *except upon proof of facts which, if accepted as true*, show not merely that it is incredible, but that it is impossible that the statement of the party accused made upon oath can be true. If the inference from the facts proved falls short of this, it seems to us that there is nothing on which a conviction can stand; because, assuming all that is proved to be true, it is still possible that no crime was committed." But as legitimate evidence for that purpose, the law makes no distinction between the testimony of a witness directly falsifying the statement of the accused and the contradictory statement of the person charged, although not upon oath. Such a statement, when satisfactorily proved, is as good evidence in proof of the charge as the criminatory statement of a person charged with the commission of any other

offence, and on precisely the same ground—that it is an admission inconsistent with his innocence. — *Reg. v. Ross*, 6 Madras H.C. Rep. 342 ; see also *Reg. v. Hook*, 27 L.J.N.S.M.C. 222. Beyond this the Penal Code requires the prosecution to prove that the accused knew or believed that the statement he made was false at the time of making it, or that he did not believe it to be true. In this last requirement the Penal Code goes beyond the English law, inasmuch as it imposes upon a witness the necessity of forming a definite belief as to the truth of his evidence before he gives it, and prevents him from sheltering himself under the plea of carelessness or inadvertence. A man, before he gets into the witness-box, must *believe* that all the evidence he is about to give is true, otherwise he gives false evidence. That this is an extension of the English law will be seen from the statement in Archbold as to what is perjury under that law: “The matter sworn must be either false in fact, or if true, the defendant must not have known it to be so.—1 Hawk.c. 69, s. 6 ; 3 Just. 166 ; Palmer, 294. As, for instance, if a man swear that J. N. revoked his will in his presence—if he really had revoked it—but it were unknown to the witness that he had done so, it is perjury.—Hetley, 97.” The state of the prisoner’s mind at the time he gave the alleged false evidence, of course, cannot be proved directly ; but surrounding circumstances will ordinarily furnish sufficient facts, from which it can be inferred that he knew or believed his evidence to be false, or did not believe it to be true.

If the defendant has always adhered to one statement, some one or more of the charges of false evidence must be proved by two witnesses : one witness alone is not sufficient, because in that case there is only oath against oath ; and the presumption of law being in favour of the innocence of the prisoner, he must be acquitted.—*R. v. Muscot*, 10 Mod. 194. But if the charge of giving false evidence be directly proved by one witness, and strong circumstantial evidence be given by another, or be established by written documents, this, it seems, would be sufficient.—*R. v. Lee*, 2 Russ. 650 ; see also *Reg. v. Boulter*, 2 Den. C.C. 396. But in England the mere contradiction of one oath of the defendant by the other is not enough.—*Reg. v. Harris*, 5 B. and Ald. 296 ; *Reg. v. Wheatland*, 8 C. and P. 238. In this latter case, upon an indictment for perjury in giving evidence before the Quarter Sessions, the prosecutor produced the examination of the defendant before the magistrate, in which he

deposed in the direct negative to everything he had sworn before the court; but Gurney, B., held this was not sufficient *per se*, without other evidence to show that the statement before the court was false and that before the magistrate true.

In India, however, a defendant who has made two contradictory statements, one of which must be false, can be convicted of perjury under Sect. 193 of the Penal Code without the court or jury finding by direct evidence *which* of such statements is false; for though Sect. 461 of the Criminal Procedure Code does not provide for an alternative finding where the conviction is for one of two offences under the *same* part of the *same* section, and where it is not decided which of the two said offences it is that the accused is guilty of; yet Schedule III. provides for a charge of perjury being framed in the alternative, and this alternative charge would be useless if the court or jury were bound to state which particular statement was false. There have been contradictory decisions as to this, but the law has been generally interpreted as above stated, and the matter is now set at rest by a full bench ruling in the case of *Reg. v. Mahomed Humayoon Shah*, 20 W.R. Crim. 72. In this case, Morris, J., stated that when a charge is framed containing two contradictory statements of such a nature that the specific offence of intentionally giving false evidence is disclosed by the two taken together, it must be matter of evidence whether the contradictory statements contained in the charge are *per se* so irreconcilable that one of them is necessarily false, and also that the prisoner in making them, intentionally spoke falsely in regard to one of them; and this evidence it is for the jury or court to decide on.

Where a prisoner is charged separately for having given false evidence with regard to two statements directly opposed to each other, a plea of guilty on one does not involve an acquittal on the other.—*Reg. v. Hossain Ali*, 8 B.L.R. App. 25.

Falsely deposing in the name of another person is giving false evidence, not cheating by personation.—*Reg. v. Prema Bhicka*, 1 Bombay H.C. Rep. 89. Where C falsely represented himself as U, the writer of a document signed by U, and T, knowing that C was not U, and had not written such document, produced C as U, and as the writer of the document, it was held that T ought to be convicted on a charge of abetting the giving of false evidence.—*Reg. v. Chundi Churn Nauth*, 8 W.R. Crim. 5. A suppression of evidence

is a giving of false evidence. A prisoner asked a witness to suppress certain facts in giving his evidence against him before a magistrate on a charge of defamation. It was held that this amounted to an abetment of the offence of giving false evidence in a stage of a judicial proceeding, and was triable by the Court of Session only.—Reg. v. Andy Chetty, 2 Madras H.C. Rep. 438. The making of a false return on oath of the service of a summons is an offence under Sect. 193, and not Sect. 181, and is cognisable by the Court of Session only—Reg. v. Shama Churn Roy, 8 W.R. Crim. 27; the giving of false evidence otherwise than in a judicial proceeding being punishable under the latter clause of Sect. 193, provided it has been given under the sanction of the law—*In re Andheen Roy*, 14 W.R. Crim. 24.

In a charge under Sect. 193 of fabricating false evidence, it is essential to prove that it was intended that the false circumstances should appear in evidence in a judicial proceeding—that is, should appear as part of the evidence on which the judicial officer has to form his judgment, and that the circumstance was of such a nature as might have caused him to entertain an erroneous opinion touching some material point in the case. Therefore it was held that a vakeel who presented a *vakalatnamah*, which falsely purported to have been signed before the *Adighari* of a village and to bear the signature of the *Adighari*, was not guilty of fabricating false evidence.—*In re Keilasuni Putter*, 5 Madras H.C. Rep. 373.

On a trial for murder, a witness had stated on oath that a person other than the prisoner had committed it; whilst before the magistrate he had stated, as was the fact, that the prisoner was the guilty party. In making such statement on the trial, the witness was guilty of an offence under Sect. 193, and not under Sect. 194, as he did not know that he would, nor did he intend to, cause a conviction for murder.—Reg. v. Hardy, 3 Ben. L.R.A. Cr. J. 35.

The word “declaration” in Sect. 199, means any statement of fact in the form simply of a declaration, which, for the purpose of proof of the fact declared, has by itself all the force of evidence given on oath, or solemn affirmation substituted for an oath; in short, a declaration receivable in lieu of personal *vivd voce* testimony.—Reg. v. Vedamootoo, 4 Madras H.C. Rep. 185, and 4 Madras Jurist, 72.

A civil court sanctioning a criminal prosecution for giving false evidence must distinctly state the exact words upon which the

prosecution is to be based, and must not give such a sanction in general terms.—Reg. v. Kartik Chunder Halder and another, 5 R.C.C. Cr. 58, and 9 W.R. Crim. 58. To a prosecution by a sub-registrar for an offence committed before him, the specific sanction of the registrar is required.—Reg. v. Kalichurn Lahoree, 5 R.C.C. Cr. 41.

At the preliminary inquiry, to ascertain whether the accused shall be committed to take his trial for giving false evidence, he must be present as an accused person, and have an opportunity of cross-examining the witnesses, and not merely be present as one of a number who give evidence on oath in respect to a certain subject-matter.—Reg. v. Kalichurn Lahoree, *supra*.

As to the meaning of the word "offence," see Sect. 40, p. 30.

#### *Destruction of Evidence.*

**Sect. 201.** *Causing Evidence to disappear, &c.*—Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall, if the offence which he knows or believes to have been committed is punishable with death, be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with transportation for life or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

#### *Illustration.*

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years and also to fine.

*Note.*—*Triable by the Court of Session, if the offence intended to be screened is capital ; by the Court of Session or a magistrate of the first class, if such offence be punishable with transportation or imprisonment for ten years ; and in the case of the offence to be screened being punishable with less than ten years' imprisonment, by a magistrate of the first class or the court by which the original offence is triable. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

### *Charge.*

That you, the said A B, on or about the            day of            , at            , knowing that a capital offence had been committed, to wit, that one C D had committed murder by causing the death of one E F, did, with the intention of screening the offender, to wit, the said C D, from legal punishment, give information respecting the said offence which you knew to be false, and that you, the said A B, have thereby committed an offence punishable under Sect. 201 of the Indian Penal Code, and within, &c.

### *Evidence.*

This section refers to persons, other than the actual criminals, who by their causing evidence to disappear, assist the principal to escape the consequences of his offence. A prisoner pushed a woman; she fell into a boat, and died then and there. Afterwards the prisoner set the boat with the corpse in it afloat down the river, and so concealed the evidence of his offence. It was held that he was not guilty of the offence of causing evidence to disappear.—Reg. v. Ramsoonder Shootar, 1 R.C.C. Circ. 19; 2 Madras Jurist, 282. But it is not necessary to show that any offence has been committed by the alleged offenders, provided the defendant committed the act under the mistaken belief that an offence has really been committed by them.—2 W.R.C.L. 1; and Reg. v. Hurdut Surma, 8 W.R. Crim. 68. But if, in fact, no crime has been committed, there can be conviction for causing evidence to disappear. Therefore, where a person has been killed in the lawful exercise of the right of private defence, and other parties have assisted the person who killed the other in disposing of the dead body, these are not guilty of causing the evidence of an offence to disappear.—Reg. v. Pelko Nushyo, 2 W.R. Crim. 43.



The proper order of proof on the part of the prosecution on a charge of giving false information is to prove,—*First*, that the principal crime was committed; *Secondly*, that the prisoner gave information respecting the offence; *Thirdly*, that such information was false, and known to him to be so; *Fourthly*, that he then knew of the commission of the principal offence; and *Fifthly*, that his intention was to screen the principal offender.—*Reg. v. Subbramanya Pillai*, 3 Madras H.C. Rep. 251.

As to the meaning of the word offence, see Sect. 40, p. 30.

### *Omitting to give Information.*

**Sect. 202.** *Omitting to give Information of an Offence.*—Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

**Sect. 203.** *Giving False Information.*—Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence, which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Note.**—*Triable by a magistrate of the first or second class. A summons should issue in the first instance under Sect. 202; a warrant under Sect. 203. Police officers may not arrest without a warrant. Defendants are bailable.*

### *Charge.*

That on or about the                      day of                      , at                      , one C D committed the offence of theft; and you, the said A B, being a peon in the police force stationed at                      , and knowing that such offence had been committed, and being legally bound, as such peon, to give information of the commission of the said offence to the officer to whom you were subordinate, to wit, to E F, intentionally omitted to give such information as aforesaid; and that you have thereby committed an offence punishable under Sect. 202 of the Indian Penal Code, and within, &c.

*Evidence.*

The offence described in Sect. 202 will in general be committed by police officers and other public servants, though, under Sect. 89 of the Criminal Procedure Code, private individuals may be guilty.

The offence under Sect. 203 may of course be committed either by a private person or a public servant indifferently, but it differs from the offence of giving false information under Sect. 201, in that there is no necessity to prove that the defendant intended to screen the principal offender from legal punishment under the present section.

See also Sect. 176, p. 148, which is wider than the present sections, which refer only to the cases where an offence has been committed.

—See *Reg. v. Joynaram Patro*, 20 W.R. Crim. 66.

As to what is the meaning of the word offence, see Sect. 40, p. 30.

*Secreting Documents.*

**Sect. 204. *Secreting Documents.***—Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced, or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned, or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Note.**—*Triable by a magistrate of the first class. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

*Personation.*

**Sect. 205. *False Personation.***—Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Note.**—See Sect. 468, Criminal Procedure Code, as to authority required for prosecution.

*Triable by the Court of Session or magistrate of the first class. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

### *Charge.*

That you, the said A B, on or about the       day of       , at       , did falsely personate one C D, a defendant in       , a suit before the Civil Judge of       , and in such assumed character did admit that the said C D was indebted to one E F, the plaintiff in the said suit, in the sum of one thousand rupees ; and that you, the said A B, have thereby committed an offence punishable under Sect. 205 of the Indian Penal Code, and within, &c.

### *Evidence.*

Prove the existence of a suit or criminal prosecution, before an authority competent to have cognisance of such suit or prosecution, and that the defendant personated the plaintiff or defendant in the suit, or the prosecutor in the prosecution, or any witness, and under such assumed character did any of the acts set out in the above section. It is absolutely necessary to a conviction for false personation under this section, that the accused should have assumed the name and character of the person he is charged with having personated. The mere fact that he presented a petition in court in the name of that individual who was ill is insufficient to show any intention of falsely personating such person.—*Reg. v. Narain Acharji*, 8 W.R. Crim. 80. Nor is it enough to show the assumption of a false name. It must also appear that the assumed name was used as a means of falsely representing some other individual. It is not an uncommon thing for men to pass under names not their own for the purpose of disguise, in some instances from blameless, in others from indifferent or bad motives. But whatever the motive, the use of an assumed name without more is not a criminal offence. The whole language of the section clearly imports the acting the part of another person, the actor pretending that he is that person. There are other Sections, as 140, 170, 171, and 415, under which the false assumption of appearance or character may

be an offence, though no particular individual is meant to be represented or only an imaginary person, but it is not so here.—Reg. v. Kather Rowton, 3 Madras Jurist, 146 ; S.C. *sub nom.* Reg. v. Kadar Ravutton, 4 Madras H.C. Rep. 18.

It has been decided in Reg. v. Prema Bhicka, 1 Bombay H.C. Rep. 89, that a person falsely deposing in the name of another is guilty of giving false evidence, and not of cheating by personation ; it is evident, however, that his act comes within the limits of, and is an offence under, this section also.

Fraudulent gain or benefit is not an essential element of the offence created by this section, and a conviction is therefore sustainable, even where the personation is with the consent of the party personated.—*Ex parte Suppakon*, 1 Madras H.C. Rep. 450.

### *Fraudulent Transfers, &c.*

**Sect. 206.** *Fraudulent Removal, &c., of Property.*—Whoever fraudulently removes, conceals, transfers, or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture, or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 207.** *Fraudulent Claim to Property.*—Whoever fraudulently accepts, receives, or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either descrip-

tion for a term which may extend to two years, or with fine, or with both.

**Sect. 208. *Fraudulently suffering a Decree.***—Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person, or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Illustration.*

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of the sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

**Sect. 209. *Dishonestly making False Claim.***—Whoever fraudulently or dishonestly, or with intent to injure any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

**Sect. 210. *Fraudulently obtaining a Decree.***—Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Note.**—See Sect. 468 of the Criminal Procedure Code as to authority for prosecuting under these sections.

*Offences under Sects. 206 and 207 are triable by a magistrate of the first or second class; those under Sects. 208, 209, 210 by a magistrate of the first class. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

*Charge of a Fraudulent Transfer.*

That one C D was a creditor of the said A B, and had sued him, the said A B, in the Moonsiff's Court of \_\_\_\_\_, in O S of 1861, and had obtained judgment against him for the sum of one thousand rupees; and you, the said A B, intending to prevent a certain piece of land situated in the village of \_\_\_\_\_, from being taken in execution of the said decree, fraudulently transferred the same to one E F; and that you, the said A B, have thereby committed an offence punishable under Sect. 206 of the Indian Penal Code, and within, &c.

*Charge of making a False Claim.*

That you, the said A B, on or about the \_\_\_\_\_ day of \_\_\_\_\_, commenced a suit in the Moonsiff's Court of \_\_\_\_\_, against one C D, and in the said suit falsely and fraudulently claimed to be the owner of certain jewels then in the possession of the said C D, with intent to injure the said C D; whereas you, the said A B, well knew that he was not the owner of the jewels so claimed by him; and that you, the said A B, have thereby committed an offence punishable under Sect. 209 of the Indian Penal Code, and within, &c.

*Evidence.*

The proofs in this case will require to be the same practically as under Sects. 421-424, and all requisite remarks will be found there. The only distinction between the sections is in the mode of transfer; under some it is by means of a deed, or suchlike instrument, under others by means of a fictitious suit.

A person who fraudulently removes property, intending thereby to prevent it from being taken in execution of a decree made by a collector, commits an offence punishable under Sect. 206 of the Penal Code, and not under Act x. of 1859, Sect. 145.—Gour Chunder Chuckerbutty v. Kishen Mohun Singh, 10 W.R. Crim. 46.

Where a person applies for the execution of a decree which has been already executed, his offence falls, not under Sect. 209, but 210.—*Reg. v. Beegum Mahtoon*, 17 W.R. Crim. 37. The fact that a settlement of a decree has been made out of and not certified to the court by the plaintiff, does not prevent the settlement being recognised in a criminal court, for Sect. 206 of the Civil Procedure Code relates solely to the civil court in which the original suit was brought. It does not say that the settlement shall not be given in evidence in any court of justice, or in any court, civil or criminal.—*Ib.*

### *False Charge.*

**Sect. 211. False Charge.**—Whoever, with intent to cause injury to any person, institutes or causes to be instituted, any criminal proceeding against the said person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Note.**—See Sect. 468 of the Criminal Procedure Code as to authority required for prosecution.

*Triable by a magistrate of the first class, unless the false charge be of an offence punishable with imprisonment for seven years, or with a more severe punishment, then by the Court of Session. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

### *Charge.*

That you, the said A B, on or about the                      day of                      , at                      , with intent to cause injury to one C D, appeared before the magistrate of                      , and then and there falsely charged the said C D with having committed an offence, to wit, with having committed a theft of fifty rupees; you, the said A B, at the time well knowing that the said C D had not committed a

theft of the said money, and that there was no just or lawful ground for such charge against the said C D ; and that you, the said A B, have thereby committed an offence punishable under Sect. 211 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove that the defendant made a charge against the complainant of having committed an offence ; the charge need not have been made before a magistrate—Reg. v. Sabbanna Gaundan, 1 Madras H.C. Rep. 30—it may be made to any person. This decision is supported by a subsequent ruling of the High Court at Calcutta, in which it was decided that instituting a criminal proceeding with intent to injure, knowing that there is no just or lawful ground for such proceeding, may be treated as a distinct offence from that of falsely charging a person with having committed an offence.—Reg. v. Nobokisto Ghose, 8 W.R. Crim. 87, and 5 R.C.C. Cr. 8. In this case it was also decided that a police officer, though acting upon the information of an informer, may be said to institute a criminal proceeding against the person charged by him ; and the consent of his superior officer to such charge will be no guarantee against the consequences of bad faith on his part.—*Id.* ; see also *in re Nabosseess Chunder*, 11 W.R. Crim. 2.

Prove that the charge is false in fact. No charge of making a false charge can be proved while the original charge is still under investigation, as it may turn out that the court conducting the investigation may say that it is a true charge ; but it is not necessary that the charge should have been fully heard and dismissed ; it is sufficient if it be not pending at the time of the trial.—Reg. v. Sabbanna Gaundan, *supra*. The mere fact, however, that a charge has been dismissed is not evidence of its falsity ; but this must be shown by positive evidence.—Reg. v. Ram Dass Boistub, 11 W.R. Crim. 35. Mere rashness in making a charge which is in fact believed is not an offence.—2 R.C.C. Cr. 11. It is for the prosecution, in the first instance, to make out a distinct case against the prisoner, and not for the latter to show that he had just grounds for making the charge.—Reg. v. Nobokisto Ghose, *ubi sup*. A deputy magistrate acts irregularly in dismissing a complaint, and directing the trial of the complainant under this section, without recording his reasons for so doing, and without examining all the witnesses ten-



dered by the complainants, or allowing a reasonable time for the attendance of such of the witnesses as are not present.—Reg. v. Heeralall Ghose, 13 W.R. Crim. 37.

The party accused of making a false charge should be allowed to show the information on which he acted, and the judge, before convicting him, ought not only to be satisfied that the facts alleged as the ground for making the charge were in themselves untrue and insufficient, but also that they were known to be so by the accused when he made the charge.—Reg. v. Navalmal Valad Umedmal, 3 Bombay H.C. Rep. C.C. 16. The fact that an accuser is an official in a subordinate position will not shield him from the consequences of false and malicious charges made by him officially.—Reg. v. Rheedoy Nanth Biswas, 2 W.R. Crim. 45.

When a person is convicted of a false charge, the nature of the false charge should be stated in the finding and entered in the calendar.—Reg. v. Arjoon, 1 Bombay H.C. Rep. 87. The charge which the prosecutor actually intended to bring, and not that which is framed by the magistrate upon his evidence, must form the basis of a prosecution under this section. If he alleges an assault and theft, he cannot be indicted for making a false charge of dacoity.—3 R.C.C. Cr. 9.

As to the authority required before commencing a prosecution in the case of a false charge against a public servant, as such, see *in re Moulvy Mahomed Abdool Luteef*, 9 W.R. Crim. 31, and 5 R.C.C. Cr. 37.

### *Harbouring.*

**Sect. 212. *Harbouring an Offender.***—Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment, shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment which may extend to one year and not to ten years, shall be punished with

imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

*Exception.*—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

*Illustration.*

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

*Note.*—For Sect. 213, see p. 189.

**Sect. 216.** *Harbouring an Offender who has escaped from custody.*

—Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody, or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following; that is to say, if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; if the offence is punishable with transportation for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine; and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

*Exception.*—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

*Note.*—For Sect. 217, see p. 194.

*Triable by the Court of Session or a magistrate of the first class, if the offender harboured has committed a capital offence or one punishable with transportation or imprisonment for ten years; and if the offence committed by the person harboured is punishable with less than ten years' imprisonment, then by a magistrate of the first class or by the court by which the original offence is triable. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are bailable.*

### *Charge.*

That on or about the                      day of                      , the offence of dacoity was committed in the village of                      by C D and others, and that you, the said A B, afterwards, to wit, on or about the                      day of                      , did harbour the said C D, well knowing (or having reason to believe) at the time you so harboured the said C D, that the said C D had committed the said offence of dacoity; and that you, the said A B, have thereby committed an offence punishable under Sect. 212 of the Indian Penal Code, and within, &c.

### *Evidence.*

The prosecutor must prove the principal offender guilty of the offence with which he is charged, as in ordinary cases, and the harbourer is at liberty to prove the innocence of the principal, even although he may have previously pleaded guilty or been convicted in due form of law. Or that the principal was lawfully in custody and escaped from such custody, in which case the accused may show that the custody was not lawful. Or that an order for the apprehension of the principal had been issued by a public servant lawfully exercising his lawful powers, and then the defendant may prove that the order was not a lawful order, although it has been acted upon and, as against the principal, confirmed. As to the meaning of the word offence, see Sect. 40, p. 30.

It must be proved that the accused harboured or concealed the principal; as, for instance, that he concealed him in his house—Dalt. 530, 531; or shut the door against his pursuers, until he should have an opportunity to escape—1 Hale, 619. If he employ another person to harbour or conceal the offender, he will be equally guilty as if he did so himself.—*R. v. Jarvis*, 2 M. & Rob. 40. There is no definition in the Code of what harbouring is, and there is no

definition in the English law-books. In England, offenders in this manner are called accessories after the fact, and a person is said to be such when, "knowing the felony to be committed by another, he receives, relieves, comforts, or assists the felon."—1 Hale, 618. The offence referred to in the present sections is obviously much narrower, and includes only the first and part of the fourth of the acts enumerated by Hale. It is obvious that taking money from an offender to allow him to escape, or supplying him with necessaries to enable him to escape, or bribing the gaoler to let him escape, does not come within either of the terms harbouring or concealing.

It must also be proved that the accused, at the time he harboured or concealed the principal offender, knew that he had committed an offence, or came within any of the provisions of either of the above two sections. The concealment, therefore, of one who was supposed to be a runaway debtor, would be no offence under Sect. 212, unless by any special or local law such an act is brought within Sect. 40. It is also necessary that the offence should be complete at the time the harbouring takes place, for, if one wound another mortally, and after the wound given, but before death ensues, a person harbour the delinquent, this does not make him accessory to the homicide—2 Hawk. c. 29, s. 35; 4 Bl. Com. 38; nor render him guilty of harbouring or concealing a person who had committed murder; but a person charged under these sections with harbouring such an offender might, by the extensive powers of amendment given to the courts, be convicted of harbouring a person who had done grievous hurt.

Although a wife or husband of the principal offender is not punishable for harbouring him or her, any other relative, even a son or daughter, is. But in these cases the intent must be proved very strongly, as the presumption would naturally be that the harbouring was simply obedience to ordinary lawful commands or feelings, and the essence of this offence consists in the intention with which the act is done. Therefore the bare receiving and assisting an offender, if done as a matter of mere humanity to a person in distress, and with no attempt or intention to screen him from justice, will be no offence.

*Gratification for Concealment of Offences.*

**Sect. 213.** *Taking Gifts, &c., to screen an Offender.*—Whoever

accepts, or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ; and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

**Sect. 214. *Offering Gift to Screen Offender.***—Whoever gives, or causes, or offers, or agrees to give or cause, any gratification to any person, or to restore, or to cause the restoration of any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence be punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ; and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

***Exception.***—The provisions of Sections 213 and 214 do not extend to any case in which the offence consists only of an act irrespective of the intention of the offender, and for which act the person injured may bring a civil action.

*Illustrations.*

- (a) A assaults B with intent to commit murder. Here, as the offence does not consist of the assault only, irrespective of the intention to commit murder, it does not fall within the exception, and cannot therefore be compounded.
- (b) A assaults B. Here, as the offence consists simply of the act, irrespective of the intention of the offender, and as B may have a civil action for the assault, it is within the exception, and may be compounded.
- (c) A commits the offence of bigamy. Here, as the offence is not the subject of a civil action, it cannot be compounded.
- (d) B commits the offence of adultery with a married woman. The offence may be compounded.

**Note.**—The offence of kidnapping may be compounded—Reg. v. Gossee Mohun Mitter, 22 W.R. Crim. 26.

**Sect. 215. Taking Reward to recover Stolen Property.**—Whoever takes, or agrees or consents to take any gratification under pretence or on account of helping any person to recover any moveable property, of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Note.**—For Sect. 216, see p. 187.

*Offences under Sections 213, 214 are triable by the Court of Session, if the principal offence be capital; by the Court of Session or magistrate of the first class, if the original offence be not capital, but punishable with ten years' imprisonment; and if the principal offence be punishable with less than ten years' imprisonment, then by a magistrate of the first class or the Court by which the original offence is triable; those under Section 215 are triable by a magistrate of the first class. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

*Charge.*

That on or about the                      day of                      , at                      , a

certain person, to wit C D, committed an offence punishable with death, to wit, the offence of murder, and that afterwards, to wit, on or about the                      day of                      , you, the said A B, did accept (*or attempt to obtain, or agree to accept*) a certain gratification for yourself, to wit, the sum of two hundred Rupees, in consideration of you, the said A B, concealing the said offence (*or screening the said C D from legal punishment for the said offence, or not proceeding against the said C D for the purpose of bringing him to legal punishment*); and that you, the said A B, have thereby committed an offence punishable under Section 213 of the Indian Penal Code, and within, &c.

### *Evidence.*

The prosecution must prove that an offence has been committed.\* They must then show that some gratification has been received or offered, or agreed to be received or given, or attempted to be obtained for one of the purposes set out in the preceding sections. The intent will be shown by words spoken between the parties, or by cotemporaneous acts, from which it may be inferred. Under Sects. 213, 214, the offence therein constituted consists as much in the corrupt motive brought into play, as in the delay to criminal justice; therefore, the mere concealment of an offence, or the omission to bring an offender to punishment, will be no offence under these sections, unless such conduct results from some gratification obtained or promised. The term gratification is not restricted to pecuniary gratifications, or gratifications which can be estimated in money.

Sect. 215 is intended for the punishment of persons who, being generally in league with thieves, or well aware of their proceedings, obtain money, &c., for the recovery of stolen property, without making any effort to bring the offenders to justice. In charges under this section, it must be proved that the moveable property

\* Mr Mayne, in his work on the Penal Code, expresses a contrary opinion. On reference, however, to the cases he quotes—*R. v. Best*, 2 Mood, C.C. 124, and *R. v. Gotley*, R. and R. 84, and the statute on which they are founded, 18 Eliz. c. 5—it will be seen that his opinion is not well founded,

as that statute expressly provides, not only against the compounding of offences which have been committed, but against the compounding of informations for *pretended or surmised* offences, to neither of which do the present sections make any reference.

was taken from the owner by some act which constitutes an offence under this Code; and also that the accused received, &c., a gratification, under pretence, or on account of helping any person to recover that property; and that he has not used all means in his power to cause the offender to be apprehended and convicted of the offence. It has been decided to be an offence to take money under pretence of helping a man to goods stolen from him, though the defendant had no acquaintance with the felon, and did not pretend that he had; and though he had no power to apprehend the felon; and though the goods were never restored, and the defendant had no power to restore them.—*R. v. Ledbitter*, 1 Wood, C.C. 76. And where A had his goods stolen, and B who knew the thieves received money from A, to endeavour to purchase the stolen property from the thieves for A, but not meaning to bring the thieves to justice; it was held that B was guilty of the felony of taking money on account of helping A to the return of stolen goods.—*R. v. Pascoe*, 1. Den. C.C. 456; 2 C. and K. 927.

Under the first two sections, the offence is complete when the corrupt gratification is accepted, or even when there is an attempt to obtain, or an agreement to accept it; and a subsequent prosecution to conviction of the principal offender will not purge this offence—*R. v. Stone*, 4 C. and P. 379—though it may go far to show, in some cases, that the intent with which the gratification was obtained, &c., did not come within the words of the section. Under Sect. 215 a subsequent prosecution of the principal offender will show that the accused has taken all the means in his power to cause that offender to be apprehended and convicted.

The wording of the exception to Sect. 214 is not by any means clear, as there are very few acts which can be called offences irrespective of the intent of the offender. The illustration used in the act of an assault, is one in which the intention of the offender forms a necessary portion of the offence.—See Sect. 351, *post*.

A case of wrongful restraint may be compromised.—3 R.C.C.S.C. 14. But house-trespass cannot be compounded, as the intention to commit an offence is of the essence of the offence.—4 R.J. and P. 171.

Under Sect. 210 of the Criminal Procedure Code, a complaint brought under the provisions of chapter xvi. of that Act may be withdrawn by leave of the magistrate at any time before the final



order. No withdrawal can, however, take place under that section where the offence is one punishable with a heavier penalty than is provided for by that chapter, as, for instance, house-trespass—4 R.J. and P. 171; nor after a committal by the magistrate—4 R.J. and P. 365.

After the committal on a charge of adultery, the husband formally withdrew the charge before the sessions judge, but the latter refused to allow the withdrawal, and went on with the case, and afterwards sentenced the defendant. The High Court of Bengal held that the withdrawal ought to have been allowed.—1 R.C.C. Cr. Circ. 3. The High Court at Bombay has also ruled, that in a case of adultery the husband may withdraw the charge.—Reg. v. Ramulo Jerio, 5 Bomb. H.C. Rep. C.C. 27, following *in re Jamni*, *ib.* 28, n.

Under the English law, no civil action can be brought in respect of any claim which arises out of a felony, until the felony has been brought before a Court of Criminal Justice, and the offender punished; but it has been ruled by the High Court of Bengal, that this principle of law does not obtain in India.—2 R.C.C.S.C. 12.

#### *Disobedience of Public Servants.*

**Sect. 217.** *Public Servant disobeying a direction of Law, with intent.*—Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save any property from forfeiture, or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 218.** *Public Servant framing incorrect Record.*—Whoever, being a public servant, and being, as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows is incorrect, with intent to cause, or knowing it to be likely that he will thereby cause loss or injury to the public or any person, or with intent thereby to save, or knowing it to be likely that he will thereby

save any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save any property from forfeiture, or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Sect. 219. *Public Servant making illegal Order.***—Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

**Sect. 220. *Illegal Commitment for Trial.***—Whoever, being in any office which gives him legal authority to commit persons for trial, or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial, or to confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

**Note.**—*Offences under Sect. 217 are triable by a magistrate of the first or second class; those under the other sections by the Court of Session. A summons should issue in the first instance under Sect. 217, and a warrant in the other cases. Police officers may not arrest without a warrant. Defendants are bailable.*

### *Evidence.*

The intention of the accused under these sections is an essential ingredient in the offence—*Reg v. Shama Churn Roy*, 8 W.R. Crim. 27; and under the latter portions of Sects. 217, 218, the actual guilt or innocence of the alleged offender is immaterial, if the prisoner believes they are guilty and intends to screen them—*Reg. v. Hurdut Surma*, 8 W.R. Crim. 68, and 3 Madras Jurist, 53.

A police officer negligently or improperly submitting an incorrect report of a local investigation may be punished under Sect. 29 of Act v. of 1861, where the proof is insufficient to bring the case within Sect. 217 or 218.—*Reg. v. Boroda Kant Mookopadhya*, 15 W.R. Crim. 17. A *Kulkarni* who makes a false report with reference to an offence committed at his village, with any of the intents

mentioned in Sect. 218, is punishable under that section.—Reg. v. Malhar Ramchandra, 7 Bomb. H.C. Rep. C.C. 64.

*Omission to Apprehend, and Negligent Escape.*

**Sect. 221.** *Omission to apprehend a Person charged with an Offence.*—Whoever, being a public servant, legally bound as such public servant to apprehend, or keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping, or attempting to escape, from such confinement, shall be punished as follows, that is to say :—

With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with or liable to be apprehended for an offence punishable with death ; or

With imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with or liable to be apprehended for an offence punishable with transportation for life, or imprisonment for a term which may extend to ten years ; or

With imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with or liable to be apprehended for an offence punishable with imprisonment for a term less than ten years.

**Sect. 222.** *Intentional omission to apprehend a Person under Sentence of a Court of Justice.*—Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence, or lawfully committed to custody, intentionally omits to apprehend such person, or if the person was lawfully committed to custody, intentionally suffers such person to escape, or intentionally aids such person in escaping, or attempting to escape from such confinement, shall be punished as follows, that is to say :—

With transportation for life, or with imprisonment of either

description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death ; or

With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards ; or

With imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended, is subject by a sentence of a Court of Justice to imprisonment for a term not extending to ten years, or if the person was lawfully committed to custody.

**Note.**—The words in this section, “or lawfully committed to custody,” and at the end, “or if the person was lawfully committed to custody,” are added under the amending Act xxvii. of 1870.

**Sect. 223.** *Negligently suffering an Escape from Confinement.*—Whoever, being a public servant, legally bound as such public servant to keep in confinement any person charged with, or convicted of any offence, or lawfully committed to custody, negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

**Note.**—The words, “or lawfully committed to custody” are added under the amending Act xxvii. of 1870.

*Offences under Sect. 221 are triable by the Court of Session, if the original offence was capital ; by the Court of Session or magistrate of the first class if such offence was not capital, but punishable with ten years' imprisonment ; and if the original offence be punishable with imprisonment for less than ten years, then by a magistrate of the first or second class ; those under Sect. 222 by the Court of Session, unless the original offender be under a sentence of less than ten years' imprisonment, then by the Court of Session or magistrate of the first class ; those under Sect. 223 by a magistrate of the first or second class. A warrant should issue in the first instance, except under Sect. 223, and then a summons. Police officers may not arrest without*

*a warrant. Defendants are bailable, except under the first two clauses of Sect. 222.*

*Charge.*

That on or about the                      day of                      , one C D was charged with (or liable to be apprehended for, or under sentence of a court of justice, to wit, the Court of Session of                      , for) an offence punishable with death, to wit, the offence of murder; and that you, the said A B, being a public servant, to wit, an inspector of police, (or keeper of the jail at                      ), and being as such public servant legally bound to apprehend (or keep in confinement) the said C D, did intentionally omit to apprehend (or negligently suffer to escape, or aid in escaping, or aid in attempting to escape, from such confinement) the said C D; and that you, the said A B, have thereby committed an offence punishable under Sect. 221 (222) of the Indian Penal Code, and within, &c.

*Evidence.*

Prove that C D was charged with the principal offence, or that he was convicted of and sentenced for it. Prove that the defendant was a public servant, whose duty it was to apprehend or keep in confinement such offender. This will generally be by producing the warrant for arrest or of commitment, or, after proving the service of a notice upon the defendant to produce it, by parol or other secondary evidence of its contents. The warrant must be shown to have been delivered to the defendant. If the charge be one of escape, it must be proved that the defendant actually had the prisoner in custody under the warrant. Lastly, prove the omission to apprehend, or the suffering of an escape, or the aiding in escaping or attempting to escape. In England, under an indictment for a negligent escape, the negligence need not be proved, as the law will imply it—1 Hale, 600; so under these sections the law will imply that the allowing to escape was intentional, and that need not, therefore, be proved.

If, in fact, the escape was not negligent, if the original defendant by force rescued himself, or was rescued by others, and the defendant under this charge made fresh pursuit after him, but without effect; all this must be shown on the part of the defendant.

It is immaterial whether the principal defendant was guilty of the offence imputed to him or not.

In charges under these sections, the nature of the offence held by the defendant should be stated, so that it may appear on the face of the charge whether he was under any legal obligation to apprehend or keep in confinement.—1 R.C.C. Circ. 19. The name of the person suffered to escape should also be stated.—*Id.*

*Resistance to Apprehension.—Escape.*

**Sect. 224.** *Resistance by a Person to his Lawful Apprehension.*—Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged, or of which he has been convicted, or escapes, or attempts to escape, from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Explanation.*—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

**Note.**—See Note to Sect. 225A. Punishment *must* be awarded for escape in addition to the punishment for any other offence.—Reg. v. Dhoonda Bhooya, 5 R.C.C. Cr. 7. A person escaping from custody in which he has been legally detained for the purpose of giving security for good behaviour does not commit an offence under this section, as he was not lawfully detained in custody for an offence.—Ruling, vii. Mad. H.C.R. xli. He will be punishable under Sect. 225A.—See R. v. Ramasawmy Marava, note to Sect. 226.

**Sect. 225.** *Resistance to Lawful Apprehension of another Person.*—Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues, or attempts to rescue, any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

Or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with transportation for life or imprison-

ment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is liable, under the sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life, or to transportation, penal servitude, or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

**Note.**—See Note to Sect. 225A.

**Sect. 225A.** *Escape of Person imprisoned for want of Sureties.*—Whoever escapes, or attempts to escape from any custody in which he is lawfully detained for failing under the Code of Criminal Procedure, to furnish any security for good behaviour, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**Note.**—Sect. 225A is made part of this Act by Act xxvii. of 1870.

*Offences under Sect. 224, the first clause of Sect. 225, and Sect. 225a, are triable by a magistrate of the first or second class ; those under the second clause of Sect. 225 by the Court of Session or magistrate of the first class ; and those under the other clauses by the Court of Session. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are bailable under Sect. 224, the first clause of Sect. 225, and Sect. 225a, but not in other cases.*

Where a police officer duly appointed under Act v. of 1861 is engaged in the discharge of any part of his duty as such police officer, when an unlawful assembly takes place, he is competent to apprehend any of the members of such assembly, and any one who

rescues the party apprehended is rightly convicted under Sect. 225.  
—Reg. v. Assam Shureef, 13 W.R. Crim. 75.

Chapters IV. (General Exceptions) and V. (Of Abetment), apply to offences punishable under this Sect. 225A (Act xxvii. of 1870).

*Unlawful Return from Transportation.*

**Sect. 226. Unlawful Return from Transportation.**—Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

**Sect. 227. Violation of Condition of Remission of Punishment.**—Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

**Note.**—*Offences under Sect. 226 are triable by the Court of Session; those under Sect. 227 by the court by which the original offence was triable. A warrant should issue in the first instance under Sect. 226, but not under Sect. 227. Police officers may arrest without a warrant under Sect. 226, but not under Sect. 227. Defendants are not bailable.*

*Charge.*

That you, the said A B, on or about the                      day of                      , were sentenced to transportation by the Court of Session of                      , to wit, for the term of your natural life, and that on the day of                      , at                      , the term of such transportation not having expired, and such punishment not having been remitted, you, the said A B, did return from such transportation; and that you have thereby committed an offence punishable under Sect. 226 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove the sentence or order of transportation by producing certi-



fied copy of charge, finding, and sentence, under the hand of the clerk of the crown or other officer having the custody of the records of the court in which the sentence was passed.—See Sect. 326, Crim. Pro. Code. This certificate must contain the effect and substance of the charge and conviction of such offender, and of the sentence or order for transportation. Merely stating that the prisoner was convicted of felony, without stating the nature of the felony, is insufficient.—*R. v. Watson*, R. and R. 468. The prisoner's identity must also be proved.

It must also be shown that the defendant was at large before the expiration of the time for which he was ordered to be transported; and it is for the defendant to show that he was justified in being at large, by having had his punishment remitted. The fact of the sentence being in force when the defendant is found at large is sufficiently proved by the certificate of the conviction and sentence, the judgment remaining unreversed, although it appear on the face of the certificate that the sentence was one which could not legally have been inflicted on the defendant for the offence of which, according to the certificate, he had been convicted.—*Reg. v. Finney*, 2 C. and K. 774. A prisoner under sentence of transportation for housebreaking, escaped from custody on his way to undergo such sentence. On his reappréhension, he was tried and convicted under Sect. 226, and was sentenced to transportation for life. On appeal, the sentence was declared to be illegal, as it is essential, to constitute an offence under this section, that the convict should actually have been sent to a penal settlement, and have returned, or been at large before his term of transportation had expired; and that the present offence was one under Sect. 224, *i.e.*, an escape from lawful custody.—*Reg. v. Ramasawmy Marava*, 4 Madras H.C. Rep. 152, and 4 Madras Jurist, 72.

If the charge be under the latter of these two sections, then the prosecution must show that the first punishment has been remitted or commuted, and that the defendant has broken the conditions on which it was so remitted.

#### *Interruptions to Judicial Proceedings.*

**Sect. 228.** *Intentional Insult, &c., to a Public Servant sitting in a Judicial Proceeding.*—Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public

servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, which may extend to one thousand Rupees, or with both.

**Note.**—See Sect. 468 of the Criminal Procedure Code as to authority required for prosecutions under this section.

**Note.**—*Triable by the court in which the offence is committed, subject to the provisions of Chap. xxxii. of the Criminal Procedure Code. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

### *Charge.*

That you, the said A B, on or about the                      day of                      , at,                      , intentionally did offer insult, to wit, by using abusive language (*or cause interruption, to wit, by holloaing and shouting*), to a public servant, to wit, C D, the magistrate of                      , while the said C D was sitting in a stage of a judicial proceeding, to wit, while the said C D was holding the preliminary inquiry previous to the committal for trial of a prisoner charged with                      ; and that you, the said A B, have thereby committed an offence punishable under Sect. 228 of the Indian Penal Code, and within, &c.

### *Evidence.*

Prove that the person insulted or interrupted was acting as a public servant, and show in what capacity he was acting; this will be sufficient evidence that he held a certain office. Show also what he was doing in order that it may be seen that he was acting within the limits of the jurisdiction conferred upon him by virtue of his holding that office, otherwise he would not be sitting in a stage of a judicial proceeding. In the charge and conviction it ought to be clearly stated that the person insulted was sitting in a stage of a judicial proceeding, the nature of which ought also to appear.—*In re Prokash Chunder Dass*, 12 W.R. Crim. 64. Then prove that the accused by some act insulted or interrupted such public servant. It must also be shown that the accused had the intention of insulting the public servant by the act alleged to have been committed by him.—*Reg. v. Hurry Kishen Doss*, 15 W.R. Crim. 62.

It has been held that prevaricating while giving evidence is not invariably proof of intentionally causing interruption to a public

servant in a stage of a judicial proceeding—Reg. v. Auba bin Bhiv-rav, 4 Bombay H.C. Rep. C.C. 6; nor is refusing or neglecting to give a direct answer to questions—Reg. v. Pandu bin Vithoji, 4 Bombay H.C. Rep. C.C. 7; nor can a conviction be had under this section simply because witnesses in a case give inconsistent evidence, or give their evidence reluctantly, and so take up the time of the court unnecessarily—Reg. v. Chota Hurry Pramanick Tantee, 15 W.R. Crim. 5. But prevarication and refusal to answer on the part of a witness may amount to intentional interruption under this section.—Reg. v. Jarmal Shravan, 10 Bom. H.C.R. 69, par. 9. Sub-registrar is a public servant, and proceedings before him are judicial proceedings within this section.—*In re Sardhavi Lall*, 13 B.L.R., App. 40.

*Personation of a Juror.*

**Sect. 229. Personation of a Juror or Assessor.**—Whoever, by personation or otherwise, shall intentionally cause or knowingly suffer himself to be returned, empanelled, or sworn as a jurymen or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled, or sworn, or, knowing himself to have been so returned, empanelled, or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Note.**—*Triable by a magistrate of the first class. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

## CHAPTER XII.

## OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

## I.—OFFENCES RELATING TO COIN.

*Counterfeiting Coin.*

**Sect. 230. Coin—Queen's Coin.**—Coin is metal used for the time being as money stamped and issued by the authority of some State or sovereign power in order to be so used.

Coin stamped and issued by the authority of the Queen, or by authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen's dominions is the Queen's coin.

*Illustrations.*

- (a) Cowries are not coin.
- (b) Lumps of unstamped copper, though used as money, are not coin.
- (c) Medals are not coin, inasmuch as they are not intended to be used as money.
- (d) The coin denominated as the Company's Rupee is the Queen's coin.

**Note.**—The first paragraph of the above section, "Coin is metal . . . so used," is substituted for "Coin is metal used as money, stamped and issued by the authority of some Government to be so used," by Act xix. of 1872.

**Sect. 231. Counterfeiting Coin.**—Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Explanation.**—A person commits this offence, who, intending to

practise deception, or knowing it likely that deception will be thereby practised, causes a genuine coin to appear like a different coin.

To constitute an offence under this section, the counterfeit must be of *some coin in ordinary use at the time of the counterfeit*. So where the counterfeit was of a coin of the Emperor Akabar, it was held no offence under this section.—*R. v. Bapu Yadav*, 11 Bom. H.C.R. 172.

**Sect. 232.** *Counterfeiting Queen's Coin*.—Whoever counterfeits, or knowingly performs any part of the process of counterfeiting the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Note.**—For Sects. 233, 234, 235, see p. 208.

**Sect. 236.** *Abetting in India, Coining out of India*.—Whoever, being within British India, abets the counterfeiting of coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

**Note.**—For Sect. 237, see p. 210. *Triable by the Court of Session. Accused persons are not bailable, and may be arrested without a warrant. A warrant for the apprehension of a defendant should be issued in the first instance.*

#### *Charge.*

That you, on or about the                      day of                      , at                      , did counterfeit a piece of the Queen's coin known as a Company's rupee; and that you have thereby committed an offence punishable under Sect. 232 of the Indian Penal Code, and within, &c.

#### *Evidence.*

The actual counterfeiting can rarely be directly proved by positive evidence. It is usually made out by circumstantial evidence, such as the finding of coining tools in the defendant's house, together with pieces of counterfeit money, some in a finished, and some in an unfinished state, or such other evidence as is sufficient for the jury to draw the inference that the defendant has been engaged in counterfeiting coin.

The definition of counterfeiting given above is exactly the same in substance as that given in Sect. 28 of the general definitions, p. 26, but there it is further stated that "it is not essential to counterfeiting that the imitation should be exact," which is the law

in England, where a trifling variance from the real coin in the inscription, effigies, or arms, does not take the case out of the statute—1 Hale, 215 ; and although the counterfeit coin was made of a different metal from the real coin, as lead, tin, copper, &c., gilt or silvered over, yet it amounted to a counterfeit within the statute—*Id.* Also, where the counterfeit coin was made to resemble the smooth-worn shillings then in circulation, without any impression upon them, the case was held to be within the statute.—*R. v. Wilson, Leach*, 285 ; *R. v. Welsh, ib.* 364. If the coins are not finished, then the case will come within the latter portion of these sections, as where the defendant was apprehended in the act of making counterfeit shillings, by steeping round blanks, composed of brass and silver, in *aquafortis*, none of which were finished, but exhibited the appearance of lead, though by rubbing they readily acquired the appearance of silver, and would pass current.—*R. v. Case*, 1 Leach, 145 ; and *R. v. Lavey, ib.* 153.

The counterfeit coin must be proved to resemble some coin used as money, that is, some coin in actual circulation, or which has not been withdrawn from circulation, at the time the offence is committed. An imitation of an ancient coin quite gone out of circulation, and kept only for the purpose of curiosity, would not be a counterfeit coin, because it is not used as money ; though, if the counterfeiter attempted to sell it as a real coin of the class of which it was an imitation, he might be charged with obtaining money by cheating.

It is not necessary to prove that the counterfeit coin was uttered, or attempted to be uttered, as the offence is the counterfeiting.—1 Hale, 215, 229 ; 3 Inst. 16 ; 1 East, P.C. 165.

Sect. 236 provides for what would not otherwise be an offence under the Code, for the general provisions on abetment provide only for the abetment of acts made punishable by the Code, and as the counterfeiting of coin out of British India is not so punishable, the abetting in India of such coining would not be there punishable.

In respect to the punishment for a second offence, it will be observed that it is not necessary that the punishment actually awarded for the first offence should have been imprisonment for three years : it is sufficient if the offence was one made punishable with imprisonment for that term, or with any heavier punishment.

Both the first and the second offence must have been punishable under the Code, and must therefore have been committed after it came into force.

As to punishment for a second offence, see also Sect. 75.

*Making, &c., Coining Tools.*

**Sect. 233.** *Making, &c., Instrument for counterfeiting Coin.*—Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument, for the purpose of being used, or knowing, or having reason to believe, that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**Sect. 234.** *Making, &c., Instrument for counterfeiting Queen's Coin.*—Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument, for the purpose of being used, or knowing, or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Sect. 235.** *Possession of Instrument, &c., for counterfeiting Coin.*—Whoever is in possession of any instrument or material for the purpose of using the same for counterfeiting coin, or knowing, or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the coin counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Note.**—For Sect. 236, see p. 206.

See Sect. 75 as to punishment in case of previous conviction.

*Offences under Sect. 234 and the latter clause of Sect. 235 are triable by the Court of Session; those under Sect. 233 and the first clause of Sect. 235, by the Court of Session or magistrate of the first class. A warrant for the apprehension of offenders should issue*

*in the first instance. Police officers may arrest without a warrant, and accused persons are not bailable.*

*Charge.*

That you, on or about the                      day of                      , did make a certain die, for the purpose of being used for counterfeiting a piece of the Queen's coin, to wit, a rupee; and that you have thereby committed an offence punishable under Sect. 234 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove that the defendant made, &c., a die, as stated in the charge, or that the die being already made, he bought, sold, or disposed of it. If the evidence only goes to the die, &c., being in the defendant's possession, then the charge must be framed on the 235th Sect., and not on either of the two preceding ones. According to the interpretation clauses in Sect. 27, an instrument of this kind will be in the possession of the defendant, if it be in the possession of his wife, clerk, or servant, provided it be on his account, which involves his having actual or constructive knowledge of it being in their possession.

Under Sects. 233 and 234 it will be sufficient if the accused only makes a part of a die, because making a part of a die is evidently a performing of part of the process of making a die, but a question may arise whether a person in bare possession of part-made die will come under the provision of Sect. 235, for nothing is said there about anything less than an instrument. The English statutes not only include an instrument for completely counterfeiting coin, but also those which are adapted only to counterfeit "any part or parts of both or either of such sides" of the coin.

Although the making or possession of tools, &c., must be for the purpose of coining, it will not be necessary formally to prove the intent of the defendant, as that may be inferred; nor is it necessary to show that coin has actually been made with the instrument in question. — *R. v. Ridgeley*, 1 East P.C. 172. If the possession or act of manufacture be innocent, it is very easy for the defendant to prove that fact, as he alone knows all the circumstances of the possession or manufacture.



Where the defendant employed a die-sinker to make, for a pretended innocent purpose, a die calculated to make shillings, and the die-sinker, suspecting fraud, informed the authorities at the Mint, and under their directions made the die for the purpose of detecting the prisoner; it was held that the die-sinker was an innocent agent, and that the defendant was rightly convicted as a principal.—*Reg. v. Bannon*, 2 Mood. C.C. 309.

A galvanic battery has been held to be a machine, and therefore an instrument for counterfeiting.—*Reg. v. Grover*, 9 Cox's Crim. Cases, 282. The following have also been held to be instruments for coining: A press for coinage—*Rex v. Bell*, 1 East P.C. 169; a puncheon for coining, though that alone without the counter-puncheon would not make the figure—*Rex v. Ridgeley*, *ubi sup.*; a collar of iron for graining the edges of counterfeit money—*Rex v. Moore*, 2 C. and P. 235; a mould of lead, having the stamp of one side of a shilling—*Rex v. Lennard*, 1 Leach C.C. 90, and 1 East P.C. 170.

*Importing, &c., Counterfeit Coin.*

**Sect. 237. *Importation, &c., of Counterfeit Coin.***—Whoever imports into British India or exports therefrom any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**Sect. 238. *Importation, &c., of Counterfeit Queen's Coin.***—Whoever imports into British India, or exports therefrom, any counterfeit coin, which he knows or has reason to believe to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Note.**—For Sect. 239, see p. 216; for Sects. 240, 241, 242, 243, see p. 214, 216; for punishment after previous conviction, see Sect. 75.

*Offences under Sect. 237 are triable by the Court of Session or magistrate of the first class; those under Sect. 238, by the Court of Session. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.*

*Charge.*

That you, on or about the                      day of                      , at                      ,

did import into British India, to wit, into the port of Bombay, certain pieces of counterfeit Queen's coin, to wit, ten thousand counterfeit Company's rupees, you, the said      , well knowing that the same were counterfeit; and that you have thereby committed an offence punishable under Sect. 238 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove that the defendant imported the counterfeit coin. Prove also the defendant's guilty knowledge; for unless that be averred in the charge and proved, it is no offence.—1 Hale, 128. It matters not under these sections whence the coin is imported, or whether it is exported. The mere importation or exportation of counterfeit coin constitutes the offence.

*Making Coin of Wrong Weight, &c.*

**Sect. 244.** *Employé at Mint making Coin of wrong weight, &c.*—Whoever, being employed in any mint lawfully established in British India, does any act or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Note.**—See Sect. 75, as to punishment in case of second conviction. *Triable by the Court of Session. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.*

*Conveying Coining Tool out of Mint.*

**Sect. 245.** *Taking Coining Instrument from Mint.*—Whoever, without lawful authority, takes out of any mint lawfully established in British India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Note.**—See Sect. 75, as to punishment for second offence. *Triable by the Court of Session. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.*

*Charge.*

That you, on or about the                      day of                      , at                      , without lawful authority, did take out of a mint lawfully established in British India, to wit, the mint at                      , a certain coining tool, to wit, a die; and that you have thereby committed an offence punishable under Sect. 245 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove that the defendant conveyed the tool or instrument charged in the charge out of some mint in British India. The article must be shown to be a tool or instrument used in coining. It must also be proved that the defendant had no lawful authority to take it out, as the Code does not, as is the case with the English statutes on the same subject, throw the burden of proof on the defendant.

*Impairing Coin.*

**Sect. 246. *Altering Weight, &c., of Coin.***—Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight, or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

*Explanation.*—A person who scoops out part of the coin, and puts anything else into the cavity, alters the composition of the coin.

**Sect. 247. *Altering Weight, &c., of Queen's Coin.***—Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Note.**—See Sect. 75 as to punishment for second offence. *Triable by the Court of Session or magistrate of the first class. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.*

*Charge.*

That you, on or about the                      day of                      , fraudulently and dishonestly did diminish the weight of ten pieces of Queen's coin, called Company's rupees; and that you have thereby com-

mitted an offence punishable under Sect. 246 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove the diminishing, &c., either by direct or circumstantial evidence; as that the defendant was in possession of filings, of impaired coin, or of files or other instruments for impairing. The meaning of the words fraudulently and dishonestly is doubtless that the defendant did the acts charged with the intent that the impaired coins should pass as good ones. This intent may be proved by showing that the defendant attempted to pass the coin, or had passed other coin so impaired, or that while in his possession he had it mixed with other money, or from any other facts of a similar nature from which the fraudulent intention may be inferred.

*Altering Appearance of Coin.*

**Sect. 248.** *Altering Appearance of Coin.*—Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**Sect. 249.** *Altering Appearance of Queen's Coin.*—Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

**Note.**—For Sect. 250, see p. 217. See Sect. 75 as to punishment in case of second conviction.

*Triable by the Court of Session or magistrate of the first class. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.*

*Charge.*

That you, on or about the      day of      , did perform a certain operation on, to wit, did wash with a certain wash, capable of producing the colour and appearance of gold, one piece of the Queen's coin, called a sixpence, with the intent that the said

coin should pass as a coin of a different description, to wit, as a half-sovereign, and that you have thereby committed an offence punishable under Sect. 249 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove that the defendant gilded or coloured genuine coin as stated in the charge. Where a wash or material is alleged to have been used by the defendant, it must be shown, either from the application by the defendant, or from an examination of its properties, that it is capable of producing the colour of gold or silver; but such a charge will be supported by a proof of colouring with gold itself.—Reg. v. Turner, 2 Mood. C.C. 41.

This section also meets the case of filing one coin so as to cause it to resemble any other.

*Possession of Counterfeit, &c., Coin.*

**Sect. 242. Possession of Counterfeit Coin.**—Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**Sect. 243. Possession of Counterfeit Queen's Coin.**—Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

For Sect. 244, see p. 211.

**Sect. 252. Possession of Altered Coin.**—Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the Sects. 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**Sect. 253. Possession of Altered Queen's Coin.**—Whoever, fraudu-

lently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the Sects. 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

**Note.**—For Sect. 254, see p. 217. See Sect. 75 as to punishment in case of second offence.

*Triable by the Court of Session or magistrate of the first class. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.*

### *Charge.*

That you, on or about the            day of           , fraudulently (or with intent that fraud might be committed) were in possession of twenty pieces of counterfeit Queen's coin, called rupees, knowing at the time you became possessed of the said coin that the said coin was counterfeit; and that you have thereby committed an offence punishable under Sect. 243 of the Indian Penal Code, and within, &c.

### *Evidence.*

Prove that the defendant had in his custody, or in the custody of his wife, clerk, or servant, the coins stated in the charge. If they were in the custody of the wife, clerk, or servant, knowledge of that fact ought to be brought home to the defendant. If pieces of counterfeit coin are found upon one of two persons acting in guilty concert, and both knowing of the possession, both will be guilty under these sections.—Reg. v. Rogers, 2 Mood. C.C. 85; Reg. v. Williams, C. & Mar. 259. Prove also that the possession of the defendant was fraudulent, or with intent to defraud, and that he knew when he became possessed of the coin that it was counterfeit. These, of course, can only be proved by the surrounding circumstances of the case; such as, for example, by evidence of former utterings of counterfeit or altered coin, or by the fact of the defendant having in his possession a large quantity of counterfeit coin of like date, and made in the same mould, wrapped up in separate papers, and distributed in different pockets of his dress.—Reg. v. Jarvis, Dears. C.C. 552; Reg. v. Fuller, R. & R. 308. Possession of one piece of

counterfeit or altered coin will be sufficient to support a conviction under these sections ; but, of course, in the event of only one such piece being found in any person's possession, the proof of guilty knowledge and intent must be very strong before a conviction can take place.

*Passing Counterfeit Coin.*

**Sect. 239. *Passing Counterfeit Coin.***—Whoever, having any counterfeit coin, which at the time when he became possessed of it he knew to be counterfeit, fraudulently, or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

**Sect. 240. *Passing Counterfeit Queen's Coin.***—Whoever, having any counterfeit coin, which is a counterfeit of the Queen's coin, and which at the time when he became possessed of it he knew to be a counterfeit of the Queen's coin, fraudulently, or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 241. *Passing Counterfeit Coin, which, when first possessed, Passer did not know to be Counterfeit.***—Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

*Illustration.*

A, a coiner, delivers counterfeit Company's Rupees to his accomplice B, for the purpose of uttering them. B sells the Rupees to C, another utterer, who buys them, knowing them to be counterfeit. C pays away the Rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the Rupees, discovers that

they are counterfeit, and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under Section 239 or 240, as the case may be.

**Note.**—For Sect. 242, see p. 214.

**Sect. 250. *Passing Altered Coin.***—Whoever, having coin in his possession with respect to which the offence defined in Section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

**Sect. 251. *Passing Altered Queen's Coin.***—Whoever, having coin in his possession with respect to which the offence defined in Section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Note.**—For Sect. 252, see p. 214.

**Sect. 254. *Delivery of altered Coin to another, which, when first possessed, the Deliverer did not know to be altered.***—Whoever delivers to any other person as genuine, or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in Sections 246, 247, 248, or 249, has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.

**Note.**—Sect. 75 provides for punishment in case of second offence.



*Offences under Sects. 241 and 254 are triable by a magistrate of the first or second class, those under Sects. 239, 240, 250, and 251, by the Court of Session or magistrate of the first class. Police officers may arrest without a warrant. A warrant should issue in the first instance. Defendants are not bailable.*

*Charge under Sect. 240.*

That you, the said A B, on or about the                      day of                      , having in your possession a counterfeit Queen's coin, called a rupee, and knowing at the time you became possessed of the said coin that it was counterfeit, fraudulently, and with intent to defraud (or fraudulently, and with intent that fraud might be committed), did deliver the same to C D (or did attempt to induce C D to receive the same), and that you, the said A B, have thereby committed an offence punishable under Section 240 of the Indian Penal Code, and within, &c.

*Charge under Sect. 241.*

That you, the said A B, on or about the                      day of                      , having in your possession a counterfeit Queen's coin, called a rupee, well knowing at the time of the commission of the hereinafter-mentioned offence that the said coin was counterfeit, but not knowing at the time you received the said coin into your possession that the said coin was counterfeit, did deliver the said counterfeit coin to C D as genuine (or did attempt to induce C D to receive the said counterfeit coin as genuine); and that you, the said A B, have thereby committed an offence punishable under Section 241 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove the delivery of the coin, or attempt to induce some person to receive the coin charged; and prove that it is counterfeit.

A shilling was given to a Jew boy for fruit, and he put it into his mouth, under pretence of trying whether it were good, and then taking a bad shilling out of his mouth instead of it, returned it to the prosecutor, saying that it was not good; this (which is called ringing the changes) was holden to be an uttering within the old English statute, and would be an attempt to induce another person to receive the coin under the Code.—*R. v. Franks*, 2 Leach,

736. It has been held to be an "uttering and putting off" as well as a "tendering" if the counterfeit coin be offered in payment, though it be refused by the person to whom it is offered, and such an act would certainly be a "delivery."—*Reg. v. Welsh*, 2 Den. C.C. 78. There must be some intention to defraud, or that fraud should be committed by some one as the consequence of the delivery. Upon an indictment on 2 W. IV. c. 34, s. 7, against husband and wife for uttering a counterfeit half-crown, it appeared that a woman asked the female prisoner to give her something, as her children were without food, and the male prisoner gave her twopence, and told her that his wife would give her something more, on which she gave the woman the bad half-crown in question, telling her to get what she could for her children; it was held by Lord Abinger, C.B., that although in the statute there were no words with respect to defrauding, yet in the proof it is necessary to go beyond the mere words of the statute, and to show an intention to defraud some person.—*Reg. v. Page*, 8 C. and P. 122. But as every person is taken to intend the probable consequence of his acts, and as the probable consequence of giving a piece of bad money to a beggar is that the beggar will pass it to some one else, and thereby defraud that person, it is a question whether this case rests upon satisfactory grounds. In fact, its correctness has been incidentally doubted by Lord Denman, C.J., in *Reg. v. Anon*, 1 Cox's Crim. Cases, 250, where the point ruled was that the giving a counterfeit coin to a woman as the price of connection with her was an uttering, as, without doubt, there was an intention to defraud. In any case a party may not be defrauded by taking base coin, as he may pass it again, but the probability is that he will be defrauded, which is sufficient. And in the case of giving bad money away in charity, even if it were held that there was no intention to defraud the person to whom the money was given, yet there is clearly an intention that fraud should be committed, because the person who last passed the bad money before it was detected would be defrauded.

It is not necessary that the uttering should be actually by the hand of the defendant. Where two persons went to a shop, and one of them went in and uttered a bad piece of money, having no more in her possession, and the other stayed outside the shop, having other bad money, it was held that both might be convicted,

as the possession and uttering were both joint.—*R. v. Skerrett*, 2 C. and P. 427.

It must also be proved that the defendant knew the coin was counterfeit when he uttered it. This, of course, must be done by circumstantial evidence. If, for example, it be proved that he passed off, or attempted to pass off, either on the same day, or at other times, whether before or after the passing charged, counterfeit coin, either of the same or a different denomination, to the same or a different person, or had other pieces of bad money about him when he uttered the counterfeit coin in question,—these facts will be evidence from which his guilty knowledge may be inferred.—*R. v. Whiley*, 2 Leach, 983 ; *Reg. v. Foster*, Dears. C.C. 456.

In charges for offences under Sects. 241 and 254, it is necessary to allege that the defendant did not know the coin was counterfeit when he received it into possession, otherwise the case must be sent to the Court of Session or magistrate of the first class, and not be tried before the magistrate. It would seem as if the prosecution ought to prove this fact as part of their case, but nevertheless it is so entirely within the knowledge of the defendant alone, that if alleged in the charge, it should be assumed to be true without further proof, especially as the law gives the accused the benefit of any doubt in respect to his guilt. But it has been held that attempted delivery of counterfeit coin by a sonar, with false statements as to how such coin was obtained, is *prima facie* proof that the sonar knew the coin was counterfeit at the time it came into his possession, so that the offence would come under Sect. 240 and not 241.—*Ram Ruttun Saha v. Bawool Whindub*, 23 W.R. Crim. 4. In fact, the most scientific way of arranging the sections would have been to place these last two as provisoes to those prohibiting the passing of bad or altered coin, reducing the punishment in such cases.

The mere possession of bad coin taken innocently is no offence, as a person may well keep it by him to prevent it being circulated, and so hinder the commission of fraud. There must be some delivery or attempted delivery of it as genuine before criminal liability attaches, or proof that the person was under the circumstances stated in Sect. 243.

II.—OFFENCES RELATING TO GOVERNMENT STAMPS.

**Sect. 255.** *Counterfeiting a Government Stamp.*—Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation.*—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

**Sect. 256.** *Having possession of an Instrument, &c., for counterfeiting a Government Stamp.*—Whoever has in his possession any instrument or material for the purpose of being used, or knowing, or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Sect. 257.** *Making, &c., Instrument for counterfeiting a Government Stamp.*—Whoever makes, or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing, or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Sect. 258.** *Sale of counterfeit Government Stamp.*—Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Sect. 259.** *Having possession of a counterfeit Government Stamp.*—Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be

punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Sect. 260.** *Using as genuine a Government Stamp known to be counterfeit.*—Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

**Sect. 261.** *Effacing any Writing from a substance bearing a Government Stamp, &c., with intent to cause loss to Government.*—Whoever fraudulently, or with intent to cause loss to the Government, removes or effaces from any substance bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Sect. 262.** *Using a Government Stamp known to have been before used.*—Whoever, fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 263.** *Erasure of mark denoting that Stamp has been used.*—Whoever, fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue, any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells, or disposes of, any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Note.**—See Sect. 75 as to punishment in case of second offence.

*Offences under Sect. 262 are triable by the magistrate of the first or second class; those under Sects. 259, 260, 261, and 263, by the Court of*

*Session, or magistrate of the first class ; and those under Sects. 255, 256, 257, and 258 by the Court of Session. In all cases, a warrant should issue in the first instance. Police officers may arrest without a warrant. Accused persons are bailable.*

*Evidence.*

All the remarks in respect to counterfeit coin apply to the offences described in the nine preceding sections, and will not therefore be repeated. By Sect. 141 of the late Stamp Act, the word "stamp," except when the contrary shall appear from the context, is used to signify a stamped piece of paper or other stamped material for writing on, and not the instrument with which the impression is made.

## CHAPTER XIII.

## OFFENCES RELATING TO WEIGHTS AND MEASURES.

**Sect. 264. *Use of False Weighing Machine.***—Whoever fraudulently uses any instrument for weighing which he knows to be false shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**Note.**—In the case of *Reg. v. Kangali Muduk*, 18 W.R. Crim. 7, where there was no evidence of intention on the part of the accused to fraudulently use false weights, the conviction was quashed, and fine levied directed to be returned—Kemp, J., remarking that in the Mofussil, scales are generally so rudely constructed that a stone is commonly used in one scale to create balance.

**Sect. 265. *Use of False Weights or Measures.***—Whoever fraudulently uses any false weight or measure of length or capacity, or fraudulently uses any weight or measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**Sect. 266. *Possession of False Weights or Measures.***—Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**Sect. 267. *Making, &c., False Weights and Measures.***—Whoever makes, sells, or disposes of, any instrument for weighing, or any weight, or any measure of length or capacity, which he knows to

be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

*Note.*—*Triable by a magistrate of the first or second class. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

*Note.*—By Sect. 381 of the Criminal Procedure Code, police officers may enter shop, and search for false weights, &c., without a warrant.

### *Evidence.*

Prove the use of the false weights, &c. If a man uses false weights, it will, under ordinary circumstances, be presumed that he knew they were false, and that he used them fraudulently, especially if the advantage gained by their use is in his own favour. So, if a man makes false weights or measures, the presumption will be that he does it knowingly, and so fraudulently. But the mere possession of such measures, &c., will not in itself raise any strong presumption of fraud, as they may have been put away so as not to be used. The fraudulent intent will be shown greatly by the place where they are found. Suppose a false balance was found fixed to a tradesman's counter where he was accustomed to sell his goods, and there was no other in the place. There would be, in this case, the strongest possible presumption that the possession was not innocent. On the other hand, suppose he had true balances in his shop, but an untrue one stowed away in an attic with a lot of lumber, there the presumption would be against fraud. A farmer had in his house a balance or portable weighing-machine and two iron weights which were found by the inspector to be light. The inspector saw no produce about the premises, and could not prove that the farmer exposed or kept for sale, or weighed for conveyance or carriage, any goods or produce, and it was held that the conviction of the farmer was wrong.—*Griffiths v. Place*, 20 L.T.N.S. 484.

In conformity with this doctrine, the High Court of Bombay has decided that the mere possession of weights in excess of the authorised standard will not support a conviction under the 266th Sec-



tion ; a fraudulent intent must be laid and proved.—Reg. v. Damodhar Dalljee, 1 Bombay H.C. Rep. 181.

In England the decisions on the subject of weights and measures have been principally on the meaning of the words “incorrect or otherwise unjust.” In the first case the defendants used a machine called a weigh-bridge for the purpose of weighing trucks. The weigh-bridge was liable to get out of order through trucks passing over it, and to have the correctness of its balance disturbed by a variety of other circumstances to which it was exposed, such as the falling of a heavy shower of rain. To compensate for any such derangement of the machine, an adjusting ball was fixed, which, by passing backwards and forwards along the thread of the screw on which it worked, caused the end of the steelyard to which it was attached to become heavier or lighter, and thus produced a compensation for any variation in the weight of the platform. The necessary adjustment was made before each time of the machine being used. On the district inspector of weights and measures calling at the station in the course of his duties he found the machine in gear, and he proceeded to test it without making use of the adjusting ball, and found it 21 lb. out of balance. It was held by the Court of Queen’s Bench that, under the circumstances, the weigh-bridge was not “incorrect or otherwise unjust” within the meaning of the 5 & 6 Will. IV. cap. 63, s. 28, and that it ought to have been properly adjusted before it was examined by the inspector.—Reg. v. London and North-Western Railway, 5 L.T.N.S. 792. In this case, Crompton, J., said,—“I do not think it [the weigh-bridge] was incorrect at all. It requires to be set before it is used, and the adjusting apparatus is made for the purpose of giving peculiar correctness, and the whole thing cannot be called incorrect because at a particular time when it was examined it was not set. I doubt if a proper examination was made; it ought to be examined when it was in a proper state to be used.” But if the machine be out of order, and requires adjustment before it will weigh correctly, such adjustment not being part of the original design of the machine, an information against a company for having an incorrect machine in their possession may be sustained.—The Great Western Railway Company v. Baillie, 34 L.J.N.S.M.C. 31. A pair of scales had a hollow brass ball hanging upon the weight

end of the beam ; the ball was constructed with a neck which could be unscrewed so as to allow shot to be placed inside, and being hung by a hook upon the beam, was easily removable. The scales were correct in that state, but if the shot inside the ball was removed, the scales were unjust, and against the purchaser ; and it was held that justices were right in finding that the ball loaded with shot was no part of the scales, and that, consequently, they were unjust.—*Carr v. Stringer*, 9 B. and S. 238, and L.R. 3 Q.B. 433.

## CHAPTER XIV.

### OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

#### *Public Nuisance.*

**Sect. 268. *Public Nuisance.***—A person is guilty of a public nuisance who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public, or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

**Note.**—For Sect. 269, see p. 233.

**Sect. 290. *Punishment for Public Nuisance.***—Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished by fine, which may extend to two hundred Rupees.

**Note.**—For Sect. 291, see p. 244.

*Triable by any magistrate. A summons should be issued in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

#### *Charge.*

That you, on or about the                      day of                      , at                      , committed a public nuisance, to wit, by erecting a certain dam in and across the river Poorna, whereby the navigation of the said river is obstructed, and common injury is caused to the public, and

that you have thereby committed an offence punishable under Sect. 290 of the Indian Penal Code, and within, &c.

*Evidence.*

In order to constitute a nuisance there must be not merely a nominal but such a sensible and real damage as a sensible person, if subjected to it, would find injurious, regard being had to the situation and mode of occupation of the property injured.—*Scott v. Firth*, 4 F. and F. 349. On an indictment for a nuisance by erecting and continuing piles and planking in a harbour, and thereby obstructing it, and rendering it insecure; a special verdict found that by the defendant's works the harbour was, in some extreme cases, rendered less secure; and it was held that the defendant was not responsible criminally for consequences so slight, uncertain, and rare, and that a verdict of not guilty must be entered.—*Rex v. Tindall*, 6 A. and E. 143; see also *Reg. v. Russell*, 3 El. and Bl. 942, and 23 L.J.N.S.M.C. 173.

It may be well here to mention a few cases which have been held to be public nuisances. Using a shop in a public market as a slaughter-house—C.C.C. 301. Erecting a manufactory for harts-horn—C.C.C. 311. Erecting a privy near the highway—3 Went. 225. Placing putrid carrion near the highway—4 Went. 213. Keeping a corpse unburied—*Reg. v. Vann*, 2 Den. C.C. 331. Keeping hogs near a public street, and feeding them with offal—C.C.C. 305; and see 2 Ld. Raym. 1163. Keeping a fierce and unruly bull in a field through which there was a footway—C.C.C. 310. Keeping a ferocious dog unmuzzled—C.C.C. 311. These last two cases would be met by Sect. 289, *post*, p. 241. Baiting a bull in the king's highway—4 Went. 213. Bringing a horse diseased with glanders into a public place to the danger of infecting the Queen's subjects—*Reg. v. Henson*, Dears. C.C. 24. Keeping wood 'naphtha in a populous place in such large quantities as to cause terror and danger—*Reg. v. Lister*, 1 Dears. and B.C.C. 209. Exposing in the public streets a child infected with small-pox—*R. v. Vantandillo*, 4 M. and Sel. 73. This last would be met either by Sect. 269 or by Sect. 270, *post*, p. 233. Boiling tripe and other entrails and offal of beasts—*Reg. v. White*, 1 Burr. 333. Stage-plays unlicensed, booths and stages for rope-dancers, mountebanks, or the like, are public nuisances—4 Bl. Com. 167, 168. Making great noise in the

night with a speaking-trumpet—*R. v. Smith*, 1 Str. 704 ; and keeping dogs which make noises in the night—2 Chit. Crim. Law, 647, 1 Russ. 452,—are public nuisances. A common scold is a public nuisance—4 Bl. Com. 109. An obstruction of a highway is a public nuisance. A common gaming-house, *i.e.*, one which is kept for gain or profit, may constitute a nuisance ; but it cannot be held, in the absence of any actual annoyance to the public, that every person who admits gamblers into his house, and all persons who game therein, are guilty of a public nuisance under Sect. 268.—*Reg. v. Hau Nagji*, 7 Bomb. H.C. Rep. C.C. 74. As between the defendant and the public, the occupier of a ruinous house, although only a tenant at will, is bound to repair it, so that it become not dangerous to the public.—*R. v. Watts*, 1 Salk. 357. The occupier of a house is bound to keep the soil in his privy from trespassing—*Tenant v. Goldwin*, 1 Salk. 360. A person kept a ground for shooting at pigeons, some of which, when fired at, escaped, and a crowd of idlers collected outside his grounds to fire at the escaped birds. Lord Tenterden, C.J., said,—“ If a person collects together a crowd of people to the annoyance of his neighbours, that is a nuisance for which he is liable. And this is an old principle. Here the defendant invites persons on his own ground to shoot pigeons. The effect of that is, that idle people collect near the spot, they tread down the grass of the neighbouring fields, destroy the fence, and create alarm and disturbance. It is not found that the defendant has attempted to prevent their so collecting. He has, indeed, had them driven off his own ground, but that is all.” Littledale, J., also said,—“ It has been contended that to render the defendant liable, it must be his object to create a nuisance, or else that that must be the necessary and inevitable result of his act. No doubt it was not his object ; but I do not agree with the other position, because if it be the *probable* consequences of his act, he is answerable as if it were his actual object. If the experience of mankind must lead any one to expect the results, he will be answerable for it.”—And so in that case a verdict of guilty was upheld—*R. v. Moore*, 3 B. and Ad. 184. But although the immediate occupier is in most cases the party liable, yet if the owner of land erect a building which is a nuisance, or of which the occupation is likely to produce a nuisance, and let the land, he is liable to an indictment for such nuisance being continued during the term.—*R. v.*

Pedley, 1 A. and E. 822. So he is, if he let a building which requires particular care to prevent the occupation in the course of nature becoming a nuisance, or doing damage.—*R. v. Pedley, supra*; *Todd v. Flight*, 30 L.J.N.S.C.P. 21. The owner of a market allowed sheep to be penned there, and he found the hurdles for the pens, and derived a profit in addition to the toll on the sheep. The sheep-droppings created a nuisance on the part where they were penned. It was held that the owner of the market was the person by whose default, permission, or sufferance the nuisance arose.—*Draper v. Sperring*, 30 L.J.N.S.M.C. 225.

To constitute the production of offensive smells a common nuisance, it is not necessary that the smells should be injurious to health, as required by Sect. 278, *post*, p. 235; it is sufficient for them to be so offensive as sensibly to detract from the enjoyment of life and property in the neighbourhood.—*R. v. White*, 1 Burr. 333; *R. v. Neill*, 2 C. and P. 485. It is necessary that the nuisance should be in a populous neighbourhood, or near a highway—*R. v. Papineau*, 1 Str. 686: and it must affect the health or enjoyment of the neighbourhood—*Rex. v. Davey*, 5 Esp. 217: for its being a public nuisance depends in a great measure upon the number of houses and the concourse of people in the vicinity—*R. v. White, supra*. Therefore, when upon an indictment against a tinman, for the noise made by him in carrying on his trade, it appeared in evidence that the noise only affected the inhabitants of three sets of chambers in Clifford's Inn, and that by shutting the windows the noise was in a great measure prevented, it was ruled by Lord Ellenborough, C.J., that the indictment could not be sustained, as the annoyance was, if anything, a private nuisance.—*Rex. v. Lloyd*, 4 Esp. 200, and 1 Russ. 318. So, too, the High Court at Calcutta has ruled that in the case of a public nuisance under Sect. 290, it must be proved that injury, danger, or annoyance has been caused either in regard to the enjoyment of property, or the exercise of a public right on the part of a portion of the community, or of any particular class of people.—*Onooram v. Lamessor*, 9 W.R. Crim. 70.

The defendant, on the other hand, may prove that the nuisance was in existence for a number of years before the houses were built or the roads constructed—*R. v. Cross*, C. and P. 483; unless the defendant be found to have increased the nuisance: or in a neighbourhood where there were already established other trades, &c.,

emitting extremely offensive or insalubrious smells, which smells were not perceptibly increased by the alleged nuisance in question.—*R. v. Neville, Peake*, 91 ; *R. v. Watts, Moo. and M.* 281. But the mere fact that there are other nuisances in the neighbourhood will not be a defence—*R. v. Neill, supra* : nor will length of time legalise a nuisance—*R. v. Cross*, 3 Camp. 227 ; and see 7 East, 199 ; 4 Bing. N.C. 183. In *R. v. Russell*, 6 B. and C. 566, it was held that, in judging of a public nuisance, the public good it does might in some cases, where the public health was not concerned, be taken into consideration, to see if the public benefit outweighed the public annoyance ; but in *R. v. Ward*, 4 A. and E. 404, that was explained in the following words : “The advantage gained ought to be closely connected with the inconvenience resulting, or rather with that which would have been an inconvenience if it were not absorbed in the superior advantage.”

Another class of nuisance not specifically mentioned in any section of the Penal Code is that of indecent exposure of the person, although it might in some cases be reached under Sect. 509, if there is the intention to insult the modesty of a woman ; but under this section it may be punished irrespective of such intent. Under the present section it will be necessary to prove that the defendant wilfully and indecently exposed his person in a public place, so as to cause annoyance to people dwelling in sight of the place, or passing by it. An indecent exposure, though in a place of public resort, if visible by one person only, is not a public nuisance—*Reg. v. Webb*, 1 Den. C.C. 338 ; *Reg. v. Watson, cit. id.* ; *secus*, if, though actually seen by one person only, there are other persons in such a situation as that they may be witnesses of the exposure—*Reg. v. Farrell*, 9 Cox Crim. Cases, 446. An omnibus is a public place.—*Reg. v. Holmes, Dears.* C.C. 207. An exposure at the back of a house in London, so as to be visible to persons in the back premises of many other houses, is an exposure in a public place.—*Reg. v. Thallman*, 33 L.J.N.S.M.C. 58 ; 1 L. and C. 326. An indictment charged two persons with indecent exposure of their persons in a public place, and it was held that a urinal with boxes or divisions for the convenience of the public, situated in an open market, was not a public place within the meaning of the allegation.—*Reg. v. Orchard*, 3 Cox C.C. 248. *Quære*, whether two persons, having committed fornication in open day on a public common

in the sight of one person only, but where others might have seen them, though there was no proof that any persons were passing over or along the common at that time, are guilty of an indecent exposure.—*Reg. v. Elliott*, 1 L. and C. 103. But it is an indecent exposure to bathe in the sea on the beach, near inhabited houses, from which the person may be seen, even although the houses may have been recently erected, and till then it may have been usual for men to bathe in great numbers at the place in question.—*Rex. v. Crunden*, 2 Camp. 89.

Imprisonment in default of payment of a fine, under Sect. 290, should be simple, not rigorous.—*Reg. v. Santu bin Lakhappa Kore*, 5 Bomb. H.C. Rep. C.C. 45.

Nuisances punishable under the Penal Code may still be made the subject of civil action, before or without prosecution.—*Jina Runchod v. Jodha Ghella*, 1 Bombay H.C. Rep. 2.

### *Infection.*

**Sect. 269.** *Negligent Act likely to spread Infection.*—Whoever unlawfully or negligently does any act which is, and which he knows, or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

**Sect. 270.** *Malignant Act likely to spread Infection.*—Whoever malignantly does any act which is, and which he knows, or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 271.** *Disobedience to a Quarantine Rule.*—Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails, and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

**Note.**—*Triable by a magistrate of the first or second class. A*



*summons should issue in the first instance, and defendants are bailable. Police officers may arrest without a warrant under Sects. 269, 270, but not under 271.*

Inoculation in itself is not an illegal or negligent act, and unless it is proved that the act was done negligently, with the knowledge or belief that it was likely to spread the infection of a disease dangerous to life, or that there was negligent dealing with the patient after inoculation with the knowledge or belief as aforesaid, there can be no conviction in respect of such an act under Sect. 269.—Madras H.C., 10th July 1867, 2 Madras Jurist, 324; see also, as to the latter part of this ruling, the case of *Rex. v. Vantandillo*, 4 M. and S. 73. In England it has been ruled that it is an offence for an apothecary unlawfully and injuriously to inoculate children with the small-pox, and while they are sick of it to cause them to be carried through the public streets.—*Rex. v. Burnett*, *ib.* 272. So, too, it is an offence to bring a horse infected with glanders into a public place.—*Reg. v. Henson*, Dears. C.C. 24.

As to the meaning of the word “malignantly,” see *ante*, p. 129.

#### *Adulteration.*

**Sect. 272. *Adulteration of Food.***—Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

**Sect. 273. *Sale of Noxious Food, &c.***—Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered, or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

**Sect. 274. *Adulteration of Drugs.***—Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy, or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for any

medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

**Sect. 275. *Sale of Adulterated Drugs.***—Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

**Sect. 276. *Sale of any Drug as a different Drug or Preparation.***—Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

**Note.**—*Triable by a magistrate of the first or second class. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

### *Fouling Water and Atmosphere.*

**Sect. 277. *Fouling Spring, &c.***—Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.

**Sect. 278. *Vitiating Atmosphere.***—Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood, or passing along a public way, shall be punished with fine which may extend to five hundred Rupees.

**Note.**—*Triable by any magistrate. A summons should issue in*

*the first instance. Defendants are bailable. Under Sect. 277, police officers may arrest without a warrant, but not under 278.*

### *Evidence.*

Prove the commission by the defendant of the act which fouls the water or vitiates the atmosphere. In the case of fouling water, the use to which the water is ordinarily put must be averred in the charge, and proved; and it must also be proved that the act of the defendant rendered it less fit for such purpose. In the case of vitiating the atmosphere, it will not be sufficient to prove that the vitiation was simply in respect of bad smells, as under Sect. 290; but it must be shown that the atmosphere is actually rendered less healthy.

### *Rash Driving, &c.*

**Sect. 279. *Rash Driving.***—Whoever drives any vehicle, or rides on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

**Sect. 280.** Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

**Note.**—*Offences under Sect. 280 are triable by a magistrate of the first or second class; those under Sect. 279 by any magistrate. A summons should issue in the first instance. Defendants are bailable. Police officers may arrest without a warrant.*

### *Charge.*

That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, did drive a vehicle, to wit, a buggy, on a certain public way, to wit, \_\_\_\_\_ street, so rashly and negligently as to be likely to cause hurt to a certain other person, to wit, C D; and that you have thereby committed an offence punishable under Sect. 279 of the Indian Penal Code, and within, &c.

*Evidence.*

Besides the proof of the rash driving, it must also be proved that there was some other person whose life was or might have been endangered, or to whom hurt or injury was likely to have been caused. For it is manifest that in a road across country where there was no person whose life could be endangered, a person driving or riding might safely go at a much greater speed than in a crowded thoroughfare. Therefore, it will not be sufficient to prove merely that the defendant was driving so rashly or negligently as to endanger any other person, if such person were in his way, but it must be shown that some person was actually there in a position of danger, or where he was likely to be in danger. The actual driver, and not the owner of the carriage, is liable under Sect. 279, in case of a collision and injury arising out of rash driving.—*Larrymore v. Pernendoo Deo Rai*, 14 W.R. Crim. 32.

*False Lights, &c.*

**Sect. 281.** *Exhibiting False Light, &c.*—Whoever exhibits any false light, mark, or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

**Note.**—For Sect. 282, see p. 239.

*Triable by the Court of Session.* A warrant should issue in the first instance. Defendants are bailable. Police officers may arrest without a warrant.

*Charge.*

That you, on or about the                      day of                      , at                      ,  
[well knowing that a certain ship called the                      (or whose  
name is unknown) was sailing on the high seas (or in a certain  
river called the                      ) near unto                      , whilst the said ship  
was so sailing as aforesaid] did exhibit a false light, with intent to  
mislead the captain or other chief officer and the crew of a certain  
ship, whose name is unknown (or of the said ship); and that you  
have thereby committed an offence punishable under Sect. 281 of  
the Indian Penal Code, and within, &c.

*Evidence.*

Prove that the defendant exhibited the false light, mark, or buoy. The intent with which he exhibited it must be proved by circumstances which fairly and naturally lead to that conclusion ; as by the fact that he was watching near the place, and that a ship was in sight, and by her movements appeared to take note of the light and follow it, although she may have found out the error and rectified her course.

*Obstructing Public Way, &c.*

**Sect. 283.** *Obstructing a public way.*—Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction, or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred Rupees.

**Note.**—For Sect. 284, see p. 240.

*Triable by the magistrate of the first or second class. A summons should issue in the first instance. Defendants are bailable. Police officers may arrest without a warrant.*

*Charge.*

That you, on or about the                      day of                      , at                      , by doing a certain act, to wit, by leaving a buggy for a long space of time, to wit, five hours, in a public way, to wit,                      street, did cause obstruction to divers persons in the said public way ; and that you have thereby committed an offence punishable under Sect. 283 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove that the way in question is a public way, or a public line of navigation. Prove the act or omission, and show that by the act or omission, obstruction, danger, or injury arises to any of the passengers. The expression "take order with," it would appear, means to make such a disposition of the property as would prevent the obstruction, &c. Prove that the defendant was in possession or in charge of the thing causing the obstruction. Where a waggoner occupied one side of a public street in a city, before his warehouses, in loading and unloading his waggons, for several hours

at a time, both day and night, and having one waggon at least usually standing before his warehouses, so that no carriage could pass on that side of the way, and sometimes even foot-passengers were incommoded by cumbrous goods lying upon the ground ready for loading; this was holden to be an obstruction, although it appeared that there was room for two carriages to pass on the opposite side of the street.—*R. v. Russell*, 6 East, 427. In the case of an ordinary highway, although it be of a varying and unequal width, running between fences one on each side, the right of passage or way, *prima facie*, and unless there be evidence to the contrary, extends to the whole space between the fences; and the public are entitled to the use of the entire of it as the highway, and are not confined to the part which may be metalled or kept in order for the more convenient use of carriages and foot-passengers. Therefore the unauthorised placing of telegraph posts and wires along a road, although not on the metalled part, is an obstruction.—*Reg. v. The United Kingdom Electric Telegraph Company*, 31 L.J.N.S.M.C. 166; see also *R. v. Wright*, 3 B. and Ad. 681. The same right exists with respect to water.—*Williams v. Wilcox*, 7 L.J.N.S.Q.B. 229. Digging trenches to lay down pipes for the supply of gas from mains to private houses may be an obstruction.—*Reg. v. The Longton Gas Company*, 29 L.J.N.S.M.C. 118; also the laying down a tramway along a public street—*Reg. v. Train*, 31 L.J.N.S.M.C. 169; and exhibiting effigies at a window, and thereby attracting a crowd—*R. v. Carlile*, 6 C. and P. 637. The building of a wall or embankment, partly in the bed of a navigable river, does not *necessarily* constitute a nuisance; the question whether it is so or not is one of fact, and if the finding negatives any actual obstruction, that is in effect an acquittal.—*Reg. v. Betts*, 16 Q.B. 1022. As to compensatory benefit to the public, see *R. v. Ward*, *ante*, p. 232.

The property must be either in the possession or charge of the defendant; but it must be so in his possession that he must necessarily be aware of its condition. The owner of a wrecked and abandoned ship is not answerable for injury done by it.—*Brown v. Mallet*, 5 C.B. 599.

### *Negligence.*

#### **Sect. 282.** *Conveying Person by Water for Hire in a Vessel*

*overloaded or unsafe*.—Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state, or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

**Note.**—For Sect. 283, see p. 238.

**Sect. 284.** *Negligent Conduct with respect to any Poisonous substance*.—Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

**Sect. 285.** *Negligent Conduct with respect to any Fire*.—Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any fire, or any combustible matter in his possession, as is sufficient to guard against any probable danger to human life from such fire or combustible matter, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

**Sect. 286.** *Negligent Conduct with respect to any Explosive substance*.—Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

**Sect. 287.** *Negligent Conduct with respect to Machinery*.—Who-

ever does, with any machinery, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

**Sect. 288.** *Negligence in pulling down or repairing Buildings.*—Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

**Sect. 289.** *Negligence with respect to any Animal.*—Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand Rupees, or with both.

**Note.**—For Sect. 290, see p. 228.

*Offences under Sects. 282, 284, 287, 288, are triable by a magistrate of the first or second class; those under Sects. 285, 286, 289, by any magistrate. A summons should issue in the first instance. Police officers, except under Sects. 284, 287, and 288, may arrest without a warrant. Defendants are bailable.*

#### *Evidence.*

As in the case of rash driving, &c., it will be necessary to prove that there was some one in the way to be injured by the negligence of the defendant.

The negligence must be positively made out. If “the evidence is equally consistent with either negligence or no negligence, it is not competent for the judge to leave it to the jury to find either alternative, but it must be taken as amounting to no proof at all.”—*Per Williams, J., in Cotton v. Wood*, 29 L.J.N.S.C.P. 333. In a



case of a horse running away and injuring the plaintiff, Erle, C.J., said: "The plaintiff is not entitled to have his case submitted to the jury, unless he gives some affirmative evidence of negligence in the defendant. The negligence imputed here is either the unskilful management of the horse, or imprudence in taking a vicious horse into the public street. The evidence is, that the defendant was riding the horse at a walk, when the animal became restive, and, though the defendant did all he could, he was overpowered, and the horse ran on to the pavement and killed the husband of the plaintiff. I can see here no affirmative evidence whatever of any want of skill on the part of the defendant. Then, is there any evidence of a culpable want of prudence in the defendant in bringing the horse into a public street? I can see none. The horse was bought the day before, and the defendant was out trying his new purchase himself. It is said that this itself is negligence, and that he ought to have ascertained the temper of the horse before he tried it. But I do not think so. There is not the slightest evidence that the defendant had any knowledge whatever of the vicious character of the horse, and he must be presumed, therefore, to have been entirely ignorant of it. And I do not think that riding a horse of which a man himself has no experience in a public street is sufficient evidence on which to rest an action for negligence."—*Hammack v. White*, 31 L.J.N.S.C.P. 129. In another case, in which a man was indicted for manslaughter, in consequence of a death caused through a rocket having exploded in his shop, and set fire to the place where the deceased was, Cockburn, C.J., said: "The prisoner kept a quantity of fireworks in his house, but that did not alone cause the fire by which the death was occasioned. It was the superadded negligence of some one else that caused it. Had the death proceeded from the natural consequence of this unlawful keeping of the fireworks—as, for instance, if from the prisoner's negligent keeping of them a rocket had gone off in spontaneous combustion, and so caused the death—the conviction might, I think, have been maintained. But here the death was caused by the act of the defendant *plus* the act of some one else."—*Reg. v. Bennett*, 28 L.J.N.S.M.C. 27.

With respect to negligent keeping of animals, the rules which govern the right to recover for damage done by them, as far as they

concern the present set of sections, are as follow : The owner of a wild animal, as a lion or a bear, which escapes and does damage, is liable for it without any proof of notice of the animal's ferocity ; but where the damage is done by a domestic animal, as an ox, a dog, &c., the plaintiff must show that the defendant knew the animal was accustomed to do mischief.—*R. v. Huggins*, 2 Ld. Raym. 1583. The gist of the action is not merely the negligent keeping, but the keeping with the knowledge of the mischievous propensity—*Jackson v. Smithson*, 15 M. and W. 563 ; *May v. Burdett*, 9 Q.B. 101 ; consequently, if a defendant be charged with negligence in keeping a wild animal, by which there is probable danger to any person, the fact of the animal being *feræ naturæ* will go far towards rendering less necessary strict proof of negligence, if danger have arisen from it.

If a dog, accustomed to bite, be let loose at night for the protection of the defendant's yard, and the injury arise from the plaintiff incautiously going into the yard after it has been shut up, no action will lie.—*Brock v. Copeland*, 1 Esp. 203 ; *Deane v. Clayton*, 1 B. Moo. 225, 245. But though a person has a right to keep a fierce dog to protect his property, he must not place it in the open approaches to his house, so as to injure persons lawfully coming to the house.—*Per Tindal, C.J.*, in *Sarch v. Blackburn*, M. and M. 505 ; see also *Blackburn v. Simmons*, 3 C. and P. 138.

Plying for hire a boat which is out of order, and unfit to carry passengers, and taking therein a hundred passengers, should be charged under Sect. 282, and not under Sect. 336.—*Reg. v. Khoda Jacla and others*, 1 Bombay H.C. Rep. 13.

The word "injury" includes any harm illegally caused to the property of any person, and is not confined to injury to the person only.—*Reg. v. Natha Lalla*, 5 Bomb. H.C. Rep. C.C. 67.

### *Repetition of Nuisances.*

By Act x. of 1872, Sect. 519, a magistrate of the district, or a magistrate of a division of a district, or any magistrate specially empowered, may enjoin any person not to repeat or continue a public nuisance, as defined in Sect. 268 of the Indian Penal Code, or under any local or special law.

Sects. 518, 521, 528 of the same Act also provide for a summary suppression of nuisances.

**Sect. 291.** *Continuance of Nuisance.*—Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

**Note.**—*Triable before a magistrate of the first or second class. A summons should issue in the first instance. Police officers may arrest without a warrant. Defendants are bailable.*

### *Obscenity.*

**Sect. 292.** *Sale of Obscene Books.*—Whoever sells or distributes, imports or prints for sale or hire, or wilfully exhibits to public view, any obscene book, pamphlet, paper, drawing, painting, representation, or figure, or attempts or offers so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

**Exception.**—This section does not extend to any representation sculptured, engraved, painted, or otherwise represented, on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

**Sect. 293.** *Possession of Obscene Books for Sale.*—Whoever has in his possession any such obscene book or other thing as is mentioned in the last preceding section for the purpose of sale, distribution, or public exhibition, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

**Sect. 294.** *Obscene Songs.*—Whoever sings, recites, or utters in or near any public place any obscene song, ballad, or words to the annoyance of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

**Note.**—*Triable before a magistrate of the first or second class. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are bailable.*

*Charge.*

That you, on or about the                      day of                      , at                      , wilfully exhibited to public view a certain obscene representation, not being a representation sculptured, engraved, painted, or otherwise represented on or in a temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose; and that you have thereby committed an offence punishable under Sect. 292 of the Indian Penal Code; and within, &c.

**Note.**—*The exception in Sect. 292 must be also negatived in a charge under Sect. 293 if it be for having an obscene representation in possession.*

*Evidence.*

The sale, distribution, or exhibition of the obscene print, &c., or the singing, reciting, or uttering of obscene words must be proved. If the charge be for importing, printing, or having in possession obscene works, it must be shown that the act charged was for the purpose of sale, distribution, or public exhibition. The mere having in possession for the purpose of gratifying the possessor's purulent feelings is not an offence. The sale of an obscene print to a person in private, he having, in the first instance, requested that such prints should be shown to him, his object being to prosecute the seller, is sufficient to support a charge under these sections.—*Reg. v. Carlile*, 1 Cox, C.C. 229.

A *lavni* is not necessarily an obscene song. It may be, and often is so, but it must be proved that the words of it were actually obscene before a conviction can take place under Sect. 294.—*Reg. v. Ganu bin Krishna Gurav*, 4 Bomb. H.C. Rep. C.C. 25.

**Sect. 294A. Keeping Lottery Office.**—Whoever keeps any office or place for the purpose of drawing any lottery not authorised by Government, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such

lottery, shall be punished with fine which may extend to one thousand Rupees.

**Note.**—The above Sect. 294A is made part of the Act by Act xxvii. of 1870.

No charge of an offence under this section shall be entertained by any court unless the prosecution be instituted by order of or under authority from the local Government. Chapters IV. (General Exceptions), V. (Of Abetment), and XXIII. (Of Attempts to Commit Offences), apply to offences punishable under this section (Act xxvii. of 1870).

## CHAPTER XV.

### OFFENCES RELATING TO RELIGION.

**Sect. 295. *Injuring Place of Worship.***—Whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 296. *Disturbing a Religious Assembly.***—Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**Sect. 297. *Trespassing on Burial Places, &c.***—Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship, or on any place of sepulture, or any place set apart for the performance of funeral rites, or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**Sect. 298. *Uttering Words, &c., with intent to wound Religious Feelings.***—Whoever, with the deliberate intention of wounding the

religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

*Note.*—*Triable by a magistrate of the first or second class. A summons should issue in the first instance. Police officers may arrest without a warrant under Sects. 295, 296, 297, but not under Sect. 298. Defendants are bailable.*

### *Evidence.*

Prove the damage, disturbance, trespass, or uttering of words. In the first and last two cases the intention must also be proved from surrounding circumstances; acts of this kind done out of mere thoughtlessness, and with no intention or knowledge of insult, do not come within these sections. In the case of a disturbance of religious worship, no proof of intention is necessary, as the very act supposes an intention to insult, if the disturbance be the immediate result of the defendant's act. Many of the great Hindoo festivals at Juggurnauth, Allahabad, Hurdwar, and other places, where thousands of Hindoos are gathered together for the performance of religious ceremonies, are likewise attended by other persons whose object it is to engage the worshippers in friendly discussion on religious subjects. Persons thus engaged commit no offence within any of the foregoing provisions of the Code. If their orderly proceedings are interrupted by other persons who seek to produce angry discussion, to create a disturbance, and to break up the congregation, a disturbance thus created, though it may be said to be indirectly occasioned by the original discussion, cannot properly be deemed to be voluntarily caused by the promoters of such discussion. So, if in the heat of an argument, words are used which do wound the religious feelings of any person, they do not constitute an offence, because they would not be uttered with the deliberate intention of wounding the religious feelings of any person. Mr Mayne, of Madras, seems to think that these sections are very dangerous ones; but if the matter be calmly considered, it will be seen that no missionary can come within the provisions of Sect. 298, unless he grossly misconducts himself,

because, in order to offend against that section, he must utter words with the deliberate intention of wounding the religious feelings of some person, which, if he is at all keeping within the limits of his office cannot be the case, as his intention is not to insult, but to convince.

It has been decided in the High Court of Madras that the interpolation of a forbidden chant in an authorised ritual is an offence under the Indian Penal Code ; but as the report makes no mention of the sections under which the defendants were charged, it is only possible to assume that the Court must have meant under some one or all of Sects. 296, 297, 298.—Narasimah Charriar *v.* Stree Krishna Lala Cherya and others, 2 Madras Jurist, 236.



## CHAPTER XVI.

## OFFENCES AFFECTING THE HUMAN BODY.

## OFFENCES AFFECTING LIFE.

*Culpable Homicide and Murder.*

**Sect. 299. *Culpable Homicide.***—Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

*Illustrations.*

- (a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in, and is killed. A has committed the offence of culpable homicide.
- (b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause, Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.
- (c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend

to kill B, or to cause death by doing an act that he knew was likely to cause death.

*Explanation 1.*—A person who causes bodily injury to another who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

*Explanation 2.*—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

*Explanation 3.*—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

**Sect. 300. Murder.**—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

*Secondly,* If it is done with the intention of causing such bodily injury as the offender knows is likely to cause the death of the person to whom the harm is caused, or—

*Thirdly,* If it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

*Fourthly,* If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

#### *Illustrations.*

- (a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.
- (b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to

cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he did intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

- (c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.
- (d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder although he may not have had a premeditated design to kill any particular individual.

*Exception 1.—When Culpable Homicide is not Murder.*—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

*First,* That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

*Secondly,* That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

*Thirdly,* That the provocation is not given by anything done in the lawful exercise of the right of private defence.

*Explanation.*—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder, is a question of fact.

#### *Illustrations.*

- (a) A, under the influence of passion, excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by

accident or misfortune in doing an act caused by the provocation.

- (b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.
- (c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.
- (d) A appears as a witness before Z, a magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.
- (e) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.
- (f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

*Exception 2.*—Culpable homicide is not murder, if the offender in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

*Illustration.*

Z attempts to horse-whip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A, believing in good faith that he can by no

other means prevent himself from being horse-whipped, shoots Z dead. A has not committed murder, but only culpable homicide.

*Exception 3.*—Culpable homicide is not murder if the offender, being a public servant, or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant, and without ill-will towards the person whose death is caused.

*Exception 4.*—Culpable homicide is not murder, if it is committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage, or acted in a cruel or unusual manner.

*Explanation.*—It is immaterial in such cases which party offers the provocation or commits the first assault.

*Exception 5.*—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death, or takes the risk of death with his own consent.

*Illustration.*

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

**Sect. 301.** *Culpable Homicide by causing the death of the wrong Person.*—If a person, by doing anything which he intends, or knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended, or knew himself to be likely to cause.

**Sect. 302.** *Punishment for Murder.*—Whoever commits murder shall be punished with death, or transportation for life, and shall also be liable to fine.

**Sect. 303.** *Punishment for Murder by a Life Convict.*—Whoever,

being under sentence of transportation for life, commits murder, shall be punished with death.

**Sect. 304.** *Punishment for Culpable Homicide not amounting to Murder.*—Whoever commits culpable homicide not amounting to murder, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

**Sect. 304A.** Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.—(Act xxvii. of 1870.)

**Note.**—The above section, 304A, is made part of the Act by Act xxvii. of 1870.

Chapters IV. (General Exceptions), V. (Of Abetment), and XXIII. (Of Attempts to commit Offences), apply to offences punishable under this section.

*Triable by the Court of Session. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.*

*Sentence of death passed by the Court of Session must be confirmed by the High Court.*

#### *Charge.*

That you, the said A B, on or about the                      day of                      , at                      , did murder C D, by doing an act with the intention of causing the death of a human being ;

*Secondly,* That you, the said A B, on the day and year aforesaid, did murder C D, by doing an act with the intention of causing such bodily injury to the said C D, as you, the said A B, knew to be likely to cause the death of the said C D ;

*Thirdly,* That you, the said A B, on the day and year aforesaid,

did murder C D, by doing an act with the intention of causing bodily harm to some person, the said bodily harm so intended to be inflicted being sufficient in the ordinary course of nature to cause death ;

*Fourthly*, That you, the said A B, on the day and year aforesaid, did murder C D by doing an act, knowing it to be so imminently dangerous that it must in all probability cause the death of a human being, such act having been committed without any excuse for incurring such risk of death ; and that you have thereby committed an offence punishable under Sect. 302 of the Indian Penal Code, and within, &c.

### *Evidence.*

*Culpable homicide* is the causing of death ; first, by doing any act with the intention of causing death ; secondly, by doing any act with the intention of causing such bodily injury as is likely to cause death ; thirdly, by doing any act with the knowledge that by doing such act death is likely to be caused ; fourthly, by any illegal omission, with the intention that such omission should cause death ; fifthly, by any illegal omission, with the intention that such omission should cause such bodily injury as is likely to cause death ; sixthly, by any illegal omission, it being known that death is likely to be the result of such omission. These last three cases are under Sect. 32, p. 27, which provides that " words which refer to acts done, extend also to illegal omissions."

To constitute culpable homicide there must be intention in doing the act, or in the omission, or else knowledge of the probable result of the act or omission, and the prosecution must establish the intention or knowledge which the law requires to make up the offence.—1 R.C.C. Cr. 5. Where these are not established, or where they are negatived, the prosecution must fail, in respect to a charge of murder or culpable homicide not amounting to murder—5 R.J. and P. 217 ; and the offence is reduced to grievous hurt—*per* Loch in Reg. v. Madur Jolaha, 8 W.R. Crim. 29 ; and Reg. v. Megha Meah, 2 W.R. Crim. 39 ; or in a case where certain persons whom the accused, a ferryman, was carrying across a river in a boat which sank, were drowned, to the offence of negligently conveying persons by water for hire in a vessel overloaded or unsafe—*in re* Maganee Behara, 11 W.R. Crim. 3. These two decisions, however, are modi-

fied, if not actually overruled, by Sect. 304A, introduced into the Penal Code by Act xxvii. of 1870, which provides an express punishment for the case of any person committing the offence of "causing the death of any person by doing any rash or negligent act not amounting to culpable homicide." In the cases of express intention to kill, the homicide is usually committed in secret, consequently it is rarely practicable to substantiate it by direct and positive testimony; but it must ordinarily be shown by circumstantial evidence. This may be lying in wait, antecedent menaces, former grudges, and concerted schemes, to do the deceased some bodily harm.—1 Hale, 451. The law holds that a man intends the probable consequences of his act—1 R.C.C. Cr. 9; and if by an act any one is killed, it is culpable homicide: thus, going deliberately with a horse used to strike, or discharging a gun among a number of people—1 Hawk. c. 29, s. 12. Explanation 1, of Sect. 299, coupled with the latter portion of the section, alters an old doctrine of English law as laid down in 1 Hale, 428, that if a man have a disease, which in all likelihood would terminate his life in a short time, and another give him a blow or a wound, or hurt, which hastens his death, this is such a killing as would constitute culpable homicide. And the alteration is this, that the slayer must know of the disease which renders the blow or wound fatal, and must also know that, under the circumstances, such a blow, &c., as he gave was likely to prove fatal.—1 R.C.C. Cr. 77. The second explanation affirms the decision in the case of *Reg. v. Holland*, 2 M. and Rob. 351—see also 3 Mor. Dig. 127, s. 174—that, if a man be wounded, and the wound turn to a gangrene or fever for want of proper application, or from neglect, and the man die of the gangrene or the fever, or if it become fatal from the refusal of the party to submit to a surgical operation, this is also such a killing as would constitute culpable homicide.—1 Hale, 428. *Secus*, if the death of the party were caused by improper applications to the wound, and not by the wound itself. *Id.*, If the death happened through improper applications, or culpable negligence in the attendants; if they were hired for the purpose of taking care of the patient, it would also be culpable homicide in them.

The third explanation of Sect. 299 alters the English law, doubtless to do away with the great difficulty there has always been to prove that the child killed had an existence independent of



that of its mother. The words, however, of the section are ambiguous. They simply say that the causing of death *may* amount to culpable homicide, but then no provision is made for the circumstances under which it is homicide. A part of the child must have been brought forth, which must mean exposed beyond the external portion of the *vagina*; therefore the operation of *craniotomy*, which would ordinarily be performed before any part of the child had been expelled, would not be culpable homicide. But suppose a foot or a leg had been exposed and drawn up again, as is recorded to have been the case when Rachel brought forth Esau and Jacob, and then from some circumstance or another, *craniotomy*, or a similar operation resulting in the death of the child, should become necessary. Under the strict words of this clause such an act would constitute culpable homicide, and would not come under any of the general exceptions contained in Sects. 87-92, *ante*, p. 66-74, but for the provisions of Sect. 315, *post*, p. 275.

We next have to consider culpable homicide by omission. The omission must be illegal—*i.e.*, it must be an omission which is punishable under the Penal Code, or an omission which is prohibited by law, or an omission which furnishes ground for a civil action, Sect. 43. If the omission be with the intention to cause death, there is not the slightest doubt that if death be caused by the omission, it will amount to culpable homicide. If the omission be not with the deliberate intention of causing death, then the defendant must know that he is likely to cause death by such omission. There is no authoritative definition of what constitutes knowledge, but in Sect. 26, *ante*, p. 7, it is thus enacted: "A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing, but not otherwise;" so a man may be said to know, if he has sufficient grounds from which a person of ordinary intelligence and skill might draw an inference which would constitute knowledge. Thus, an engine-driver on a railway seeing a danger-signal must be held to know that there is danger, and to take the risk of *any* danger there may be if he disregards it. So, if it be the duty of an engine-driver to look out for a signal which will warn him of danger, if there be any, he must be held responsible for all the consequences of his omission if he neglects to look out for the signal. But the omission must be one of an absolute duty, as in the case of *Reg. v. Hughes*, 26 L.J.N.S.M.C.

202, where it was the duty of a banksman to place a stage on the mouth of the shaft of a coal-pit to receive a loaded truck run down to it on a tramway; but he neglected to place the stage, whereby the truck fell down the shaft and killed a workman who was at the bottom. In this case Lord Campbell, C.J., said: "The death of the deceased was the direct consequence of the omission of the prisoner to perform his duty. If the prisoner, of malice aforethought, and with the premeditated design of causing the death of the deceased, had omitted to place the stage on the mouth of the shaft, and the death of the deceased had thereby been caused, the prisoner would have been guilty of murder. According to the common-law form of an indictment for murder by reason of the omission of a duty, it was necessary that the indictment should allege that it was the duty of the prisoner to do the act, or to state facts from which the jury might infer that it was his duty. But it has never been doubted that if death is the direct consequence of the malicious omission of the performance of a duty (as of a mother to nourish her infant) this is a case of murder. If the omission was not malicious, and arose from negligence only, it is a case of manslaughter."

To constitute culpable homicide, the killing must be by a person of sound memory and discretion. It cannot be done by a child under seven years of age.—Sect. 82, p. 56. Nor is it an offence if done by a child above seven years of age and under twelve; unless he has attained sufficient maturity of understanding to judge of the nature and consequences of his act—Sect. 83, p. 57; nor, by Sect. 84, if the person committing the homicide is insane. As to the effect of drunkenness, see Sects. 85 and 86, *ante*, p. 64.

*Killing while doing some other Act.*—Under the English law, the quality of this act differs under different circumstances. If a man shoot at another's poultry, with intent to steal them, and by accident kill a man, it is murder; if without such an intent, it is manslaughter; the act of shooting at the poultry being unlawful but not felonious.—Fost. 258. If a man fired at his own poultry, and killed a man, it would be misadventure only, unless it were in a place where persons were likely to pass, when it would be manslaughter.—*R. v. Burton*, 1 Str. 481. The third illustration (c) appended to Sect. 299, *ante*, p. 250, however, does away with this distinction, and provides that in such a case the slayer has committed no offence in respect of the homicide. Of course, if the fowl

were in a place where the act of firing at it was likely to cause death, from the number of persons living or passing in the neighbourhood, that fact would render the slayer guilty of culpable homicide.

*Murder.*—Under the English law murder is killing with malice aforethought. Malice is either express or implied. Express malice is the positive possession of the intention referred to in the first three clauses of Sect. 300, *ante*, p. 251; implied malice is either the possession of a general intention of such a nature implied from the acts of the accused, or the wanton running of the risk mentioned in the fourth clause of the same section. Express malice is shown by lying in wait, antecedent menaces, former grudges, and concerted schemes, to do the deceased some bodily harm.—1 Hale, 451. So, if a man resolve to kill the next person he meets, and do kill him, it is murder, although he knew him not, for it is universal malice.—4 Bl. Com. 200. If a man wilfully poisons another, in such a deliberate act the law presumes malice, although no particular enmity be proved.—1 Hale, 455. No provocation, however great, will justify or extenuate a homicide, where there is evidence of express malice.—*R. v. Mason*, Fost. 132. So, where A and B, having fallen out, A said he would not strike, but would give B a pot of ale to strike him, whereupon B did strike, and A thereupon killed him, this was holden to be murder.—1 Hawk. c. 31, s. 24. These two cases would come within the first proviso to Exception 1 to Sect. 299, because the provocation would have been sought, or voluntarily provoked, by the slayer as an excuse for killing or doing harm to his opponent. If two persons fight upon a sudden quarrel, and be separated, and one of them afterwards, having provided himself with a deadly weapon, lies in wait for the other, to have an opportunity, thus armed, to renew the quarrel, and they accordingly meet, quarrel, and fight, and the man who is armed kills the other, this is murder.—See *R. v. Snow*, 1 Leach, 151; 1 East, P.C. 245. Neither will he be guilty of a less crime who shows himself to be an enemy to mankind in general by killing another through an exceedingly wilful or wanton act; as going deliberately with a horse used to strike, or discharging a gun among a multitude of people.—1 Hawk. c. 29, s. 12. This will come under the fourth clause of Sect. 300; the committing an act so eminently dangerous that it must in all probability cause death, &c., without any excuse

for incurring the risk of causing death. To bring a case under this clause, it must be shown distinctly that the accused at the time of committing the act charged knew that in all probability it would be likely to cause death, or that it would bring about such bodily injury as would be likely to cause death. Therefore, where a poisonous drug was administered to a woman to procure miscarriage, and there was no evidence that the accused had any knowledge of the properties of the drug beyond the immediate purpose for which they employed it, or that it was likely to cause death, or such injury as was likely to result in death, it was held that they were not guilty of murder, but of an offence under Sect. 314.—Reg. v. Kalachand Gope, 10 W.R. Crim. 59. No provocation whatever can render homicide justifiable. If a man kill another on slight provocation only, it is murder; but if on grave provocation, the offence is only reduced to manslaughter, or culpable homicide not amounting to murder. The provocation must, however, be grave and sudden, so as to deprive the offender of the power of self-control, which is of course a question of fact; the High Court will not interfere with the finding of a jury on that point.—Reg. v. Sohraie, 13 W.R. Crim. 33. In charging a jury on the point of provocation, a judge should tell them that, to bring the case within the first exception to Sect. 300, the prisoner must have been deprived of the power of self-control by grave and sudden provocation, that the feeling which took away the power of self-control must have had an adequate cause, and that the provocation must not have been sought by the prisoner as an excuse for doing harm.—Reg. v. Gunesh Luskur, 9 W.R. Crim. 72; Reg. v. Hari Giri, 1 Ben. L.R.A. Cr. J. 11, and 10 W.R. Crim. 26. Where some provoking words being used by a soldier to a woman, she gave him a box on the ear, and the soldier immediately gave her a blow with the pommel of his sword on the breast, and then ran after her, and stabbed her in the back; this was at first deemed murder, but it appearing afterwards that the blow given to the soldier was with an iron patten, and that it drew a great deal of blood, it was holden to be manslaughter only.—R. v. Steadman, Fost. 292. An unwarrantable imprisonment of a man's person has been holden sufficient provocation to make a killing even with a sword, manslaughter only.—R. v. Buckner, Sty. 467; R. v. Withers, 1 East, P.C. 233. Therefore where a constable took a man without warrant, upon a charge

which gave him no authority to do so, and the prisoner ran away, and J. S., who was with the constable all the time, ran after the prisoner, who, to prevent his being retaken, killed J. S., it was holden to be manslaughter only, although, whilst under the charge of the constable, the prisoner struck the man who gave the charge, because a blow under the provocation of the illegal arrest would not justify the constable in detaining him, unless the blow were likely to be followed by dangerous consequences, and formed a new and distinct ground of detainer.—*R. v. Curvan*, 1 Mood. C.C. 132; see also *R. v. Thomson*, *id.* 80. If a man pull another's nose, or offer him any other great personal indignity, and the other thereupon kill him, it is manslaughter only.—*Kel.* 135; 4 Bl. Com. 191. Or if a man take another in adultery with his wife, and kill him directly on the spot, it is manslaughter only.—1 Hale, 486; *R. v. Manning*, T. Raym. 212; 1 Vent. 159; *Reg. v. Kelly*, 2 C. & K. 814. So, if a father see another person committing an unnatural crime with his son, and instantly kill him, it is manslaughter only; but if he hear of it, and go in quest of him, and kill him, it is murder.—*Reg. v. Fisher*, 8 C & P. 182. Under Sect. 100 of the Penal Code, the first case would not even be culpable homicide if the killing of the assailant were in good faith—i. e., in the belief that the killing of the assailant would prevent the commission of the crime. The wife of the prisoner had been forcibly taken to the house of the deceased, a native physician, who alleged that her presence was necessary to the due performance of certain incantations. The prisoner, being suspicious of what was going to happen, was armed with a sword, and watching from the roof of a house near. While so watching, he saw the deceased actually attempting to violate his wife. He then jumped down from the roof, and while the deceased, having risen from off the prisoner's wife, was escaping through a door, struck him with a sword in several places, from the effects of which he died. On appeal the High Court held that a conviction for murder could not be sustained, as the act was done under the influence of grave and sudden provocation which deprived the prisoner of the power of self-control.—*Reg. v. Ramtahal Kahar*, 3 Ben. L.R.A. Cr. J. 33. If the deceased had been actually attempting to ravish the prisoner's wife, and had not ceased his attempt when the blows were struck, the homicide would have been justifiable under clause 3 of Sect. 100. But where, under similar cir-

cumstances, the prisoner not only beat the deceased, but carried him for some distance to the bank of a river, and there cut off his head, it was holden to be murder.—Reg. v. Yasin Sheikh, 12 W.R. Crim. 68. Where a boy, after fighting with another, ran home bleeding to his father, and his father immediately took a small cudgel, and ran three quarters of a mile to the place where the other boy was, and struck him a single blow with the stick, of which blow the boy afterwards died, it was holden to be manslaughter only.—R. v. Rowley, 12 Co. 87. Under somewhat similar circumstances to those of Rex. v. Rowley, two Judges of the High Court at Calcutta against one upheld a ruling of the Sessions Judge that this was murder and not manslaughter.—Reg. v. Dasser Bhooyan, 8 W.R. Crim. 71. Where a mob threw a pickpocket into a pond for the purpose of ducking him, but he was unfortunately drowned, this was holden to be manslaughter.—R. v. Thay, 1 East, P.C. 236. So too, doubtless, if a man were to pull aside the curtains of a palanquin, in which was a woman who was accustomed always to go abroad veiled, and put his head in, and the husband or near relation of the woman were to kill the intruder, this would probably be holden to be but culpable homicide.

*Arrest by Officers of Justice.*—A man is by law supposed to bow before its authority, therefore no action of any officer in obedience to the law will be a sufficient ground of provocation so as to excuse in any way the killing of the officer. Three things are to be attended to in matters of this kind; the legality of the deceased's authority, the legality of the mode in which he exercised it, and the defendant's knowledge of that authority: for if an officer be killed in attempting to execute a writ or warrant invalid on the face of it, or against the wrong person, or out of the district where alone it could be legally executed; or if a private person interfere, and act in a case where he has no authority by law to do so; or if the defendant had no knowledge of the officer's business, or of the intention with which a private person interferes, and the officer or private person be killed,—it would be manslaughter, or culpable homicide not amounting to murder, only. By the law of England the officer, and persons acting in aid of him, enjoy this protection *eundo, morando, et redeundo*; therefore, if an officer, on his way to do his duty, be opposed and killed, or if he arrive at the place, and in consequence of opposition, retreat, and on his retreat be killed, it is

murder.—Fost. 308, 309 ; 9 Co. 67 b ; 1 Hale, 462 ; Reg. v. Phelps, C. and Mar. 180.

1. *Legality of the Authority.*—If an officer having a warrant from a proper magistrate to apprehend B for felony, or if B be indicted for felony, or if the hue-and-cry be levied against B, in these cases if B, or any of his accomplices, kill the officer, or any person joining in the hue-and-cry, it is murder, whether B be guilty or innocent of the felony charged against him.—Fost. 318. But if the warrant were illegal, and void upon the face of it—see 1 Hale, 459 ; 1 East, P.C. 310 ; or issued with a blank in it, and the blank was afterwards filled up—R. v. Stockley, 1 East, P.C. 310 ; and see Housin v. Barrow, 6 T.R. 122 ; R. v. Winwick, 8 T.R. 454 ; R. v. Hood, 1 Mood. C.C. 281 ; or issued with an insufficient description of the defendant, as, for instance, if it were to take the son of J. S., *id.*, or if it be attempted to be executed against C instead of B,—the killing would be manslaughter only. If a writ of execution in civil cases be correct upon the face of it, although the judgment be erroneous, or the proceedings irregular, if the officer endeavouring to execute it be resisted, and killed, it is murder.—1 Hale, 457 ; Fost. 411, 412.

2. *Legality of the Mode of Executing Warrant.*—The warrant must be executed within the proper jurisdiction, and by the person authorised by law to execute it. If the constable of the village of A attempt without warrant to suppress a tumult in the village of B, and be resisted, and killed, it is manslaughter only, for he had authority in such a case within the village of A only.—1 Hale, 459. So, if a sheriff's officer attempt to execute a writ out of the proper county, and be resisted, and killed, it is manslaughter only.—1 Hale, 457 *et seq.* A constable who had a warrant to apprehend A, gave it to his son, who, in attempting to apprehend A, was stabbed with a knife which he had in his hand, the constable being in sight, but a quarter of a mile off, it was held that the son had no authority to apprehend A.—R. v. Patience, 7 C. and P. 775.

3. *Defendant's knowledge of the Deceased's Authority or Intention.*—If the slayer knew the officer's business, either expressly from the deceased, or impliedly from the surrounding circumstances, the killing is murder—R. v. Howarth, 1 Mood. C.C. 207 ; but if he was ignorant in this respect, it is manslaughter only—1 Hawk. c. 31, ss. 49, 50 ; Fost. 310 ; 1 Hale, 458. Where a bailiff rushed into a gentleman's bedchamber early in the morning, without giving the

slightest intimation of his business, and the gentleman, not knowing him, wounded him with his sword and killed him, this was held to be manslaughter.—1 Hale, 470. Where, however, a constable shows a warrant—1 Hale, 461; or where it appears that the defendant knew him to be an officer, and said, “Stand off! I know you well enough; come, at your peril!”—*R. v. Pew*, Cro. Car. 183,—if the officer be killed by the defendant, it will be murder. If a constable interfere to prevent an affray within his own village—if he be killed by one of the inhabitants, or other person who knows him to be a constable, it will be murder; but if by a stranger, it will be manslaughter only. So, if one of several know him to be a constable, it will be murder in him and manslaughter in the rest.—1 Hale, 438. If a constable command the peace—1 Hale, 461; or show his staff of office—Fost. 311; this, it would seem, is a sufficient intimation of his authority. Foster on this point says: “With regard to those ministers of justice who, in right of their office, are conservators of the peace, and in that right alone interpose in the case of riots or affrays, it is necessary, in order to make the offence of killing them amount to murder, that the parties concerned should have some notice with what intent they interpose; otherwise, the persons engaged may in the heat and bustle of an affray imagine that they came to take a part in it. But, in these cases, a small matter will amount to a due notification. It is sufficient if the peace be commanded, or the officer in any other manner declare with what intent he interposeth, or if the officer be within his proper district, and known or generally acknowledged to bear the office he assumeth, the law will presume that the party killing had due notice of his intent, specially if it be in the day-time. In the night-time some further notification is necessary, and commanding the peace, or using words of the like import, notifying his business, will be sufficient. I remember a saying of a very learned judge, that a constable’s staff will not make a constable. This is very true. But if a minister of justice be present at a riot or affray within his district, and, in order to keep the peace, produce his staff of office, or any other known ensign of authority; this, I conceive, will be a sufficient notification with what intent he interposeth.” Private persons, however, when they interfere must expressly intimate the intention with which they interpose, otherwise the killing of them will be manslaughter only.—Fost. 310, 311.



If, however, express malice be shown on the part of the person killing, even the cases which have been stated to be manslaughter only will be murder.—*R. v. Stockley*, 1 East, P.C. 310; *R. v. Curtis*, Fost. 135.

*Killing by Officers.*—An officer of justice, resisted in the execution of his legal duty, may repel force by force; and if, in so doing, he kill the person resisting, it is justifiable homicide; and this in civil as well as criminal cases.—1 Hale, 494; 2 Hale, 118. The same as to persons acting in aid of the officer.—Fost. 318. A party, whether acting as a *chowkedar* or a private person, is protected by law in using that amount of violence necessary to secure a fugitive house-breaker.—*Reg. v. Protab*, 2 W.R. Crim. 9. Still there must be an apparent necessity for the killing; for, if the officer were to kill after the resisting had ceased—1 East, P.C. 297; or if there were no reasonable necessity for the violence used upon the part of the officer—*R. v. Goffe*, 1 Vent. 216,—the killing would be manslaughter at the least. Also, in order to justify an officer killing a prisoner, it is necessary that he should be legally authorised to take and keep him, and be executing his duties legally, so that the killing of the officer would be murder. If the officer exceed his duties, and thus kill the person he has to arrest or keep in custody, the Code specially provides that that is culpable homicide not amounting to murder.

If the prisoners in a jail, or going to a jail, assault the jailer or officer, and he, in his defence, kill any of them, it is justifiable, for the sake of preventing an escape.—1 Hale, 496.

*Culpable Homicide by Consent.*—This is a provision peculiar to the Indian Penal Code, and doubtless was introduced for the purpose of putting a stop to certain practices which prevail in India, amounting under the English law to murder; but which were nevertheless, in some measure, sanctioned by the religious belief prevalent in that country. The Indian Law Commissioners say: "It appears to us that this description of homicide ought to be punished, but that it ought not to be punished so severely as murder. Our reasons for not punishing it so severely as murder are these: In the first place, the motives which prompt men to the commission of this offence are generally more respectable than those which prompt men to the commission of a murder. Sometimes it is the effect of a strong sense of religious duty, sometimes

of a strong sense of honour, not unfrequently of humanity. The soldier who, at the entreaty of a wounded comrade, puts that comrade out of pain; the friend, who supplies laudanum to a person suffering the torment of a lingering disease; the freed-man who, in ancient times, held out the sword that his master might fall on it; the high-born native of India, who stabs the females of his family at their own entreaty, in order to save them from the licentiousness of a band of marauders,—would, except in Christian societies, scarcely be thought culpable; and even in Christian societies, would not be regarded by the public, and ought not to be treated by the law, as assassins.” Also, the crime of culpable homicide by consent does not produce any sense of general insecurity to society.

The case of a Suttee is a noted example of this exception. Z, a Hindoo woman, consents to be burned with the corpse of her husband. A kindles the pile. Here, if Z be above the age of eighteen years, A has committed culpable homicide not amounting to murder; but if Z be under eighteen, no amount of consent on her part can reduce the crime below that of murder. In a case of Suttee, some of the prisoners actually set fire to the pile, while one who did not co-operate, in the first instance, in causing the death of the widow, took an active part in causing her to return to the pile when she had left it, after having been partially burnt. The Bengal High Court held that the former prisoners were guilty of culpable homicide, and the latter one of abetment of suicide.—1 R.J. and P. 174. Where death supervened upon emasculation, voluntarily submitted to by an adult, the operator was held not to be guilty of murder, but of culpable homicide.—1 R.C.C. Cr. 12. Certain snake-charmers, by professing to be able to cure snake-bites, induced several persons to allow themselves to be bitten by poisonous snakes, and from the effects of the bite three persons so bitten died. The High Court laid down that clauses 2 and 3 of Sect. 300, explained by illustration (c), showed that the act of the prisoners in wilfully and intentionally causing the deceased to be bitten on their naked bodies by a deadly snake, an injury sufficient in the ordinary course of nature to cause death, is not the less murder because they may have believed that they could remove, and intended to remove, by their incantations, the effect of the injury. If the offence be not murder, it is because it falls within

the 5th explanation of Sect. 300—*i.e.*, where the deceased takes the risk of death with his own consent; but Sect. 90 provides that a consent is not such a consent as is intended by any section of this Code, if the consent is given under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such misconception. There was no doubt that the deceased in this case did give their consent under a misconception of fact—*viz.*, the belief that the prisoners, by incantations, could heal or protect them from the bite of venomous snakes; but if the prisoners believed, though erroneously, that they had the power of restoring to health persons who might have been bitten, in that case they did not know that the consent of the deceased was given in consequence of a misconception. In that case they must have acted in the belief that the deceased gave their consent with a full knowledge of the facts, and in the belief of the existence of powers which the prisoners asserted and believed themselves to possess; and in this view of the case, the prisoners would be guilty of culpable homicide not amounting to murder, under Sect. 304.—*Reg. v. Punai Fattama*, 3 Ben. L.R. 4. Cr. J. 27; and 12 W.R. Crim. 7.

Duelling would also come within this exception, for each of the parties manifestly “takes the risk of death with his own consent.” Each consents that the other shall fire at him with a pistol, or thrust at him with a sword, and the law would imply that that was a consent, whatever might be the result of the firing or thrusting.

*Killing of Party other than the one intended.*—It has been decided by the English law that if A, intending to kill B, kills C in mistake, it is murder. The Penal Code provides that the offence of killing C shall be of the same nature as the killing of B would have been, had he been slain. Where the accused killed A, whom he had no intention of killing, having intended to kill B, with a highly lethal weapon, like a *dao*, he was held guilty of the murder of A.—*Reg. v. Phomonee Ahum*, 8 W.R. Crim. 78.

For the sections relating to the right of private defence, see p. 96 to 106.

### *Attempts to Murder, &c.*

**Sect. 307. Attempt to Murder.**—Whoever does any act with such intention or knowledge, and under such circumstances, that if he

by that act caused death he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death.

*Illustrations.*

- (a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.
- (b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined in this section, though the death of the child does not ensue.
- (c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section; and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of this section.
- (d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table, or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

**Note.**—The last paragraph of this section, “When any—death,” is added by Act xxvii. of 1870.

**Sect. 308.** *Attempt to commit Culpable Homicide.*—Whoever does any act with such intention or knowledge, and under such circumstances that if he by that act caused death he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and if hurt is caused to any person by such act, shall be punished with imprison-

ment of either description for a term which may extend to seven years, or with fine, or with both.

*Illustration.*

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death, he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

**Note.**—For Sect. 309, see p. 273.

*Triable by the Court of Session.* A warrant should issue in the first instance. Police officers may arrest without a warrant. Attempts to commit culpable homicide not amounting to murder are bailable, but not attempts to murder.

*Charge.*

That you, the said A B, on or about the       day of       , at       , did attempt to murder C D; and that you have thereby committed an offence punishable under Sect. 307 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove some act done by the prisoner towards the accomplishment of his object, by which act he in any measure launches his purpose so as to have it no longer under his control, and be able to stop it if he wished; the illustrations (c) and (d) sufficiently explain this. The act committed by the prisoner must be such as is capable of causing death in the natural course of events. Therefore, where the prisoner presented an uncapped gun at A B (believing the gun to be capped) with intent to murder him, but was prevented from pulling the trigger, it was held that he had committed no offence under Sect. 307.—*Reg. v. Cassidy*, 4 Bombay H.C. Rep. C.C. 17. The contrary would, however, be the case if the charge were of an attempt to commit an offence under Sect. 511, and therefore it would be no defence under the latter section to show that in consequence of something which intervened the act of the accused could not have caused death. All that is necessary is an intent and a consequent act under such circumstances that if

the act were to cause death the slayer would be guilty of murder, or of culpable homicide not amounting to murder. Therefore, if a pistol was loaded with powder and shot, but the touch-hole was so plugged that it could not possibly be fired, and the accused were wilfully to point the pistol at another and pull the trigger so as to fire the cap or ignite the priming, although in consequence of the stoppage the powder in the barrel was not ignited, the person presenting the pistol might be guilty of an attempt to murder under Sect. 511; because, if his act of pulling the trigger had caused the pistol to go off and the person at whom it was aimed had been killed, the killing would have amounted to murder. It is, however, doubtful, from the wording of Sect. 511, whether it applies to any case in which punishment has been elsewhere provided for an attempt to commit an offence.

*Exposing Children and other Persons.*—The following cases have been held to be murder in England, and therefore any act done towards those ends would be an attempt to murder: an unnatural son who exposed his sick father to the air against his will, by reason whereof he died—1 Hawk. c. 31, s. 5; a harlot who laid her child in an orchard where a kite struck it and killed it; a mother who hid her child in a pig-sty where it was devoured; parish officers who moved a child from parish to parish till it died from want of care and sustenance—1 Hale, 433; Bl. Com. 197. So, where an indictment charged the death of a child to have been caused by its mother casting it on a heap of ashes, and leaving it there in the open air, exposed to the cold, whereby it died; this was held to contain a sufficient charge of murder, inasmuch as it alleged a *misfeasance*; but if it had charged the death to have been caused by a mere *nonfeasance* in the neglect of the defendant's maternal duties, it would have been bad, unless it had also shown that the child was of so tender an age, or was placed in such a situation as to be unable to take care of itself—Reg. v. Waters, 1 Den. C.C. 356. See also Reg. v. Hogan, 2 Den. C.C. 277; Reg. v. Cooper, 1 Den. C.C. 459; Reg. v. Phillpot, Dears. CC. 179. So, where an apprentice died from harsh treatment on the part of his master, whilst he was labouring under disease; this was holden to be murder in the master.—R. v. Squire, 1 Russ. 426. If the charge, however, be one of *nonfeasance*, as in neglecting to provide food, the prosecution must show not only a duty in the defendant to

supply food, but also that the child was of such tender years as to be unable to provide food for itself—*R. v. Friend*, R. and R. 20; *Reg. v. Marriott*, 8 C. and P. 425; and also that the defendant was in the possession of means to provide for him—*Reg. v. Chandler*, Dears. C.C. 453. If a charge of murder or attempting to murder is to be made out, it must also be shown that the defendant *wilfully* withheld food intending thereby to kill or commit one of the offences mentioned in Sect. 300.—*Reg. v. Condé*, 10 Cox, Crim. Cases, 547. In the case of the exposure of an infant, much, too, will depend upon the place where it was exposed. A woman leaving her illegitimate child at its father's door can have no intention of killing it, and the act is really not a negligent one, for she may easily suppose that the door would shortly be opened and the child found. Though the aspect of this case even may be altered, if the child be left insufficiently clothed on a wet or cold night, or in the blazing noon-day sun of a tropical climate. A very different case is where a woman leaves her child in the bush or jungle, away from human ken, and where the wild beast may devour it, or where it must inevitably die from the exposure or starvation. Where a child was abandoned in a thicket close to a house and a footpath, wrapped in a quilt, and was found very shortly after its exposure, and died, not from the effect of its exposure, but from the ignorance of the people who found it, and gave it no food; it was held that the prisoner could not be convicted of murder, or of an attempt to murder, as the exposure was not the cause of death, but that he was punishable under Sect. 317.—*Reg. v. Khodabun Fakeer*, 10 W.R. Crim. 52. See also Sect. 317, *post*, p. 277, as to exposure of children.

### *Suicide.*

**Sect. 305. *Abetment of Suicide of Child, &c.***—If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide; whoever abets the commission of such suicide, shall be punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

**Sect. 306. *Abetment of Suicide.***—If any person commits suicide, whoever abets the commission of such suicide shall be punished

with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Note.**—For Sect. 307, 308, see pp. 268, 269.

**Sect. 309.** *Attempt to Commit Suicide.*—Whoever attempts to commit suicide, and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, and shall also be liable to fine.

**Note.**—*Abetment of suicide under Sects. 305 and 306 is triable by the Court of Session; attempts to commit suicide, by the magistrate of the district. The attempt is bailable, but not the abetment. A warrant should issue in the first instance. Police officers may arrest without a warrant.*

#### *Charge.*

That A B (being a person under the age of eighteen years at the time of his death) committed suicide, and that you, the said C D, abetted the said A B in the commission of the said suicide, and that you, the said C D, have thereby committed an offence punishable under Sect. 306 (305) of the Indian Penal Code, and within, &c.

#### *Evidence.*

The only point necessary to be discussed in these sections is the clause in Sect. 309, which subjects to punishment any one who “does any act towards the commission of” suicide. This must be such an act as would irresistibly manifest the intention of the would-be suicide—such as taking poison, jumping into a well, firing a pistol at his own body. A man intending to commit suicide may take a long journey to hide it from his friends. The commencing of the journey, however, is not an act towards the commission of suicide, for the act is not one which in any way will enable him to put an end to his life, but simply one which will enable him to conceal the contemplated act of suicide from his friends.

Fine alone is not a legal punishment for the offence constituted by Sect. 309, there must be some imprisonment.—*Reg. v. Chen-viowa*, 1 Bombay H.C. Rep. 4.

Abetment of suicide is confined to the case of persons who aid and abet the commission of suicide by the hand of the person himself who commits the suicide. When a person, at the request or with the consent of another, kills that person, he is guilty of homi-



cide by consent, which is one of the forms of culpable homicide, and not of abetment of suicide.—1 R.J. and P. 174. See also the facts of the case from which this decision is quoted, which was one of Suttee, as noted, *ante*, p. 267.

### *Thugs.*

**Sect. 310. Thug.**—Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery, or child-stealing, by means of or accompanied with murder, is a thug.

**Sect. 311. Punishment.**—Whoever is a thug shall be punished with transportation for life, and shall also be liable to fine.

**Note.**—*Triable by the Court of Session. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.*

### *Charge.*

That you, on or about the                      day of                      , at                      , were a thug, being habitually associated with others for the purpose of robbery and child-stealing, by means of and accompanied by murder; and that you have thereby committed an offence punishable under Sect. 311 of the Indian Penal Code, and within, &c.

### *Evidence.*

Prove that the defendant is in the habit of associating with others for a common purpose, or in such a manner as that he must have known of the doings of the others, and that the constant meetings could not be innocent. For instance, if he had been seen assisting in the initiation of a thug, or in the immediate neighbourhood of such ceremony, and in the company of those who had been assisting at the ceremony, and that before or afterwards he was in the habit of meeting the same men, whether secretly, by night or day, or openly. Having shown this connection, acts of robbery or child-stealing by means of or accompanied by murder, committed by any of the persons he associates with, may be given in evidence to show what the purpose of the association was. Or that he was in possession of property belonging to, and stolen from, a murdered man; or any other facts from which the purpose for which he met the others might be inferred.

OF THE CAUSING OF MISCARRIAGE, OF INJURIES TO UNBORN CHILDREN, OF THE EXPOSURE OF INFANTS, AND OF THE CONCEALMENT OF BIRTH.

*Causing Abortion.*

**Sect. 312. *Causing Miscarriage.***—Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith, for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

*Explanation.*—A woman who causes herself to miscarry is within the meaning of this section.

**Note.**—In the case of *Reg. v. Arunja Bewa*, 19 W.R. Crim. 32. Glover and Mitter, J.J. held that this section did not apply where the child was full grown, but in such a case conviction would follow under this section taken with Sect. 511.

**Sect. 313. *Causing Miscarriage without Woman's Consent.***—Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 314. *Death caused.***—Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the act is done without the consent of the woman, shall be punished either with transportation for life, or with the punishment above-mentioned.

*Explanation.*—It is not essential to this offence that the offender should know that the act is likely to cause death.

**Sect. 315. *Act done with intent to prevent a Child being born alive, or to cause it to die after birth.***—Whoever, before the birth of any child, does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth,

and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

**Sect. 316.** *Death of Unborn Child through act amounting to Culpable Homicide.*—Whoever does any act under such circumstances, that if he thereby caused death, he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### *Illustration.*

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

**Note.**—*Triable by the Court of Session. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are not bailable, except for offences under Sect. 312.*

#### *Charge.*

That you, the said A B, on or about the                      day of                      , at                      , voluntarily did cause a certain woman, to wit, C D, then being (quick) with child (without the consent of the said C D), to miscarry, such miscarriage not being caused by you, the said A B, in good faith, for the purpose of saving the life of the said C D; and that you, the said A B, have thereby committed an offence punishable under Sect. 312 (or 313) of the Indian Penal Code, and within, &c.

#### *Evidence.*

Under Sects. 312 and 313, evidence must be given that the defendant did some act in consequence of which the woman to whom the act was done miscarried. Under the 314th Section, there is no

need to prove any miscarriage, but simply the act done, and the subsequent death of the woman. The intent of the defendant may be proved, from the fact that he knew the woman was in the family way, either by him or by any one else whom he would wish to shield; that he had conversations with the deceased about the matter; and also from the nature of the drugs he administered, or other acts he did, or instruments he used. A woman who tries to cause herself to miscarry, she, in fact, not being pregnant, cannot be convicted of the offence described in Sect. 312, but another person who abets her act may be convicted of abetment of that offence.—*Reg. v. Cabul Pattur*, 15 W.R. Crim. 4. *Quære*, however, whether the woman might not have been convicted under Sect. 511 of an attempt to commit this offence.

The other two sections sufficiently explain themselves. In England, the expression “quick with child” has been held to mean, “having conceived.”—*Reg. v. Wycherley*, 8 C. and P. 262.

### *Exposure of Children.*

**Sect. 317.** *Exposure of Children under twelve.*—Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place, with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

*Explanation.*—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

*Note.*—*Triable by the Court of Session.* A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are bailable.

### *Charge.*

That you, being the father (or mother, or having the charge) of A B, a child under the age of twelve years, to wit, of the age of eight years, did expose and leave such child in a certain place, to wit, \_\_\_\_\_, with the intention of wholly abandoning such child, and that you have thereby committed an offence punishable under Sect. 317 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove that the defendant, being the father or mother of the child, exposed or left it in any place; prove also the intention wholly to abandon; for this section was intended to prevent the abandonment or desertion by a parent of his or her children of tender years, in such a manner that the children, not being able to take care of themselves, would run the risk of dying or being injured—in *re Felani Hariani*, 16 W.R. Crim. 12; this intention will be inferred from the way in which, and the place where, the child was left—see *Reg. v. Khodabux Fakeer*, 10 W.R. Crim. 52. In Bengal, among the lower classes of Mahomedans, it sometimes happens that parents, in fulfilment of a vow, take one of their male children to the Sunderbuns, and there apparently desert him. The place chosen is near some durgah or shrine erected by the Fakirs, to which the child has been dedicated. The intention, it is said, is not that the child should be abandoned, for the parent continues at hand; but that he should find his way to the neighbouring Fakir, and, after remaining some time, shall choose either to return to his family or to adopt the Fakir's mode of life. In such cases, there can be no intention of entirely abandoning so as to bring the act within this section. Again, according to a superstitious usage which prevails in some parts of Eastern Bengal, an infant suffering from convulsions, or which refuses sustenance, &c., is put into a basket and swung up to a tree, to all appearances abandoned. The belief is, that if the child is to be restored at all, it will be restored by the spirit by whom the child is possessed, if entirely delivered into its power. The parents of the child declare that they place the child there in the hope of preserving its life, and that they are not neglectful of its wants. In all these cases, it is a question for the jury to determine with what intention the child was exposed. As Willes, J., said in the case of *Reg. v. Wagstaffe*, at the Central Criminal Court, at the January Session, 1868, “there may be a belief so utterly absurd, and devoid of foundation, that the person putting it forward must either be insane, or else to the crime which he has already committed be adding that of hypocrisy; but no person is absolutely to be bound by the opinion of another, so as to prevent him from honestly carrying out his own convictions

as to how his children, or those dependent upon him, should be treated, whether in health or sickness."

The child, too, must be proved to be under the age of twelve years.

*Concealment of Birth.*

**Sect. 318.** *Concealment of Birth.*—Whoever, by secretly burying or otherwise disposing of the dead body of a child, whether such child die before, or after, or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Note.**—*Triable by the Court of Session, or magistrate of the district. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are bailable.*

*Charge.*

That you, the said A B, on or about the            day of            , at            , did secretly dispose of the dead body of a child, to wit, the male child of the said A B, then recently born; and that you have thereby committed an offence punishable under Sect. 318 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove that the defendant was delivered of a child, and that the child was dead, and prove also some act of concealment. Where a woman, delivered of a seven months' child, threw it down a privy, and it appeared that another woman, charged as an accomplice, knew of the birth, the judges held that the act of throwing the child down the privy was evidence of the endeavour to conceal the birth.—*R. v. Cornwall, R. and R. 336.* Where a woman was delivered of a child, the dead body of which was found in a bed amongst the feathers, but there was no evidence to show who put it there, and it appeared that the mother had sent for a surgeon at the time of her confinement, and had prepared child's clothing, the Judge directed an acquittal, on the charge for endeavouring to conceal the birth.—*R. v. Higley, 4 C. and P. 366.* But where the mother caused the body of her child to be secretly buried, with a view to conceal the birth, it was held that she might be convicted

of the concealment, though she previously allowed the birth to be known to some persons.—*R. v. Douglas*, 1 Mood. C.C. 480. On the other hand, the mere denial of the birth is not sufficient to convict her; there must also be some act of disposing of the dead body.—*Reg. v. Turner*, 8 C. and P. 755. The disposition need not be final.—*Reg. v. Goldthorpe*, 2 Mood. C.C. 244; and *Reg. v. Perry*, Dears. C.C. 471. Where the mother of a bastard child induced her paramour to take away and bury the body, she remaining in bed, it was held that she might be convicted of concealing the dead body, and he of aiding and abetting.—*Reg. v. Bird*, 2 C. and K. 817; *Reg. v. Skelton*, 3 C. and K. 119.

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PERSONAL OFFENCES NOT AFFECTING LIFE.

*Hurt.*

**Sect. 319. *Hurt*.**—Whoever causes bodily pain, disease, or infirmity to any person, is said to cause hurt.

**Sect. 320. *Grievous Hurt*.**—The following kinds of hurt only are designated as “grievous”:

First, Emasculation.

Secondly, Permanent privation of the sight of either eye.

Thirdly, Permanent privation of the hearing of either ear.

Fourthly, Privation of any member or joint.

Fifthly, Destruction or permanent impairing of the powers of any member or joint.

Sixthly, Permanent disfiguration of the head or face.

Seventhly, Fracture or dislocation of a bone or tooth.

Eighthly, Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

**Sect. 321. *Voluntarily causing Hurt*.**—Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said “voluntarily to cause hurt.”

**Sect. 322. *Voluntarily causing grievous Hurt*.**—Whoever volun-

tarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

*Explanation.*—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

*Illustration.*

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

**Sect. 323. *Punishment for voluntarily causing Hurt.***—Whoever, except in the case provided for by Sect. 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand Rupees, or with both.

**Sect. 324. *Voluntarily causing Hurt by dangerous Weapons or means.***—Whoever, except in the case provided for by Sect. 334, voluntarily causes hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Sect. 325. *Punishment for voluntarily causing grievous Hurt.***—Whoever, except in the case provided by Sect. 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.



**Sect. 326.** *Voluntarily causing grievous Hurt by dangerous Weapons or means.*—Whoever, except in the case provided by Sect. 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Note.**—For Sect. 327, see p. 285.

**Sect. 334.** *Voluntarily causing Hurt on Provocation.*—Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both.

**Sect. 335.** *Causing grievous Hurt on Provocation.*—Whoever causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand Rupees, or with both.

**Explanation.**—The last two sections are subject to the same provisions as Exception 1, Sect. 300, *ante*, p. 251.

**Note.**—*Offences under Sects. 323 and 334 are triable by any magistrate; those under Sects. 324, 325, and 335, by the Court of Session or magistrate of the first or second class; and those under Sect. 326, by the Court of Session or magistrate of the first class. A summons should issue in the first instance. Police officers may arrest without a warrant. Defendants are bailable, unless charged under Sect. 326.*

For Sect. 336, see p. 288.

#### Charge.

That you, on or about the                      day of                      , at                      ,

voluntarily did cause (grievous) hurt to A B, such (grievous) hurt not being caused on grave and sudden provocation; and that you have thereby committed an offence punishable under Sects. 323 (or 325) of the Indian Penal Code, and within, &c. *If the charge be framed on Sect. 324 or 326, after "A B" insert "by means of an instrument for shooting, to wit, a pistol," or such other allegation contained in these sections as is warranted by the evidence.*

### *Evidence.*

Prove the hurt, or grievous hurt, as the case may be, and if so charged that it was caused by any one of the aggravated means mentioned in Sects. 324 and 326; also that it was caused by the defendant. In the case of Sects. 334 and 335, the grave and sudden provocation must be such as not to furnish a defence under the sections relating to the right of private defence, as in the latter case there would be a complete answer to the charge. The fact that the defendant neither intended, nor knew himself to be likely to cause, hurt to any person other than the person who gave the provocation, must be proved from surrounding circumstances. The question of grave and sudden provocation is also one of fact for the jury, or magistrate sitting as a jury. Where a woman died from a chance kick in the spleen inflicted by her husband when provoked by her, the husband not knowing that the spleen was diseased, and showing, by the blow itself and his conduct immediately afterwards, that he had no intention or knowledge that the act should or was likely to cause hurt endangering human life, it was held that the person had committed an offence under Sects. 319 and 321, and not under Sects. 320 and 322.—Reg. v. Bysagoo Nushyoo, 8 W.R. Crim. 29.

Hurt caused on grave and sudden provocation to the person giving the provocation, should be charged on an offence under Sect. 334, and not under Sect. 324.—Reg. v. Bhulu Chulu, 1 Bombay H.C. Rep. 17.

Scars on the face causing a permanent disfigurement amount to grievous hurt.—Reg. v. Anta bin Dadoba, 1 Bombay H.C. Rep. 101. Where a man was so injured that he had to go to hospital, but left it perfectly cured on the twentieth day, it was held by *Scotland, C.J.*, that this day would count as one of the twenty days during which he had been unable to follow his ordinary pursuits.—Reg. v. Sheik Bahadoor, 2d Madras Session, 1862.

Where the prisoners were charged under Sect. 148 with rioting armed with deadly weapons, and also under Sect. 324 with causing hurt with dangerous weapons, they should be convicted and sentenced only under one or other of these sections, and not under both, as the charges were in the nature of alternative charges.—*Reg. v. Dina Sheikh*, 10 W.R. Crim. 63.

A person tried and acquitted on a charge of using criminal force cannot afterwards be charged with committing hurt in respect of the same transaction.—*Kaptan v. Smith*, 16 W.R. Crim. 3.

The High Court at Madras has ruled that the words, “such (grievous) hurt not being caused on grave and sudden provocation,” are not necessary—4 Madras H.C. Rep., App. 5; but on this point see also 1 R.C. and C. Cr. 33.

Voluntarily causing hurt under Sect. 323 may be lawfully compounded.—*Reg. v. Jetha Bhala*, 10 Bom. H.C.R. App. Cr. Jr. 68.

### *Administering Drugs with Intent.*

**Sect. 328. Administering Drugs with Intent.**—Whoever administers to, or causes to be taken by, any person, any poison, or any stupefying, intoxicating, or unwholesome drug, or other thing, with intent to cause hurt to such person, or with intent to commit, or to facilitate the commission of an offence, or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Note.**—Sect. 40 defines the meaning of the word “offence.”

*Triable by the Court of Session. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.*

For Sect. 329, see p. 286.

### *Charge.*

That you, the said A B, on or about the                      day of                      , at                      , did administer to one C D a certain stupefying drug, to wit, opium, with intent to facilitate the commission of an offence, to wit, the offence of rape upon the said C D, and that you, the said A B, have thereby committed an offence punishable under Sect. 328 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove the administering of the drug, and its nature. If the charge be that the administering was with intent to cause hurt, it must be proved that the drug was capable of causing "bodily pain, disease, or infirmity;" if to facilitate the commission of a crime, then that its effect is such as would tend to that end—*e.g.*, laudanum or chloroform administered for the purpose of committing robbery or rape; any substance used to excite sexual passion to facilitate the commission of adultery. The intent, or knowledge of the defendant, will ordinarily be inferred from the nature of the substance administered, and the way in which it is administered, and his acts before and afterwards. Where the defendant administered cantharides to a woman, and the jury found that it was administered with the intent to excite her sexual passion and desire, in order that the defendant might obtain connexion with her; this was held to be an administering with intent to "injure, aggrieve, and annoy" her.—*Reg. v. Wilkins*, 31 L.J.N.S.M.C. 72. A person who placed in his toddy-pots juice of the milk-bush, knowing that, if taken by a human being, it would cause injury, and with the intention thereby of detecting an unknown thief who was in the habit of stealing the toddy from such pots, and which toddy was drunk by and caused injury to certain soldiers who purchased it from an unknown seller, was held to have been rightly convicted of "causing to be taken an unwholesome thing with intent to injure;" and that Sect. 81, which says that "if an act be done without any criminal intention, it is not an offence," did not apply to the case.—*Reg. v. Dhanja Daji*, 5 Bomb. H.C. Rep. C.C. 59.

The words "other thing" must be read, "other unwholesome thing." Hence, administering a substance as to the nature of which no evidence was given, but which was intended to act as a charm, was held to be no offence.—1 W.R.C.C. 7.

*Causing Hurt with Intent to extort.*

**Sect. 327.** *Voluntarily causing Hurt to extort.*—Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer, or any person interested in such sufferer, to do anything which is illegal, or which may facilitate

the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Note.**—For Sect. 328, see p. 284.

**Sect. 329.** *Voluntarily causing grievous Hurt to extort.*—Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer, or any person interested in such sufferer, to do anything which is illegal, or which may facilitate the commission of an offence, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 330.** *Voluntarily causing Hurt to extort Confession, &c.*—Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer, or any person interested in the sufferer, to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

*Illustrations.*

- (a) A, a police officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.
- (b) A, a police officer, tortures B, to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.
- (c) A, a revenue officer, tortures Z, in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.
- (d) A, a zemindar, tortures a ryot, in order to compel him to pay his rent. A is guilty of an offence under this section.

**Note.**—It does not matter under this section whether the offence or misconduct has been in fact committed, so that a charge may be

made under this section when no offence or misconduct has been committed.—*Reg. v. Nin Chand Mookerji*, 20 W.R. Crim. 41.

**Sect. 331.** *Voluntarily causing grievous Hurt to extort Confession, &c.*—Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer, or any person interested in the sufferer, to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 332.** *Voluntarily causing Hurt to deter Public Servant from his Duty.*—Whoever voluntarily causes hurt to any person, being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person, or any other public servant, from discharging his duty as such public servant, or in consequence of anything done, or attempted to be done, by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Sect. 333.** *Voluntarily causing grievous Hurt to deter Public Servant from his Duty.*—Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person, or any other public servant, from discharging his duty as such public servant, or in consequence of anything done, or attempted to be done, by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Note.**—Sect. 40 defines the meaning of the word “offence.”

*Triable by the Court of Session. Offences under Sect. 332 triable by Court of Session or magistrate of the first class. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable, except under Sects. 330 and 332.*

For Sect. 334, see p. 282.

*Charge.*

That you, the said A B, on or about the                      day of                      , at                      , did voluntarily cause (grievous) hurt to one C D, for the purpose of extorting from the said C D (*or* from a person interested in the said C D, to wit, E F) certain property, to wit, a sum of three hundred Rupees; and that you, the said A B, have thereby committed an offence punishable under Sect. 327 of the Indian Penal Code, and within, &c.

*Charges under the other sections in this group may be drawn up by altering the above form to suit the circumstances of the case.*

*Evidence.*

Prove that the defendant caused hurt or grievous hurt. The intent must be inferred from the circumstances of the case. It is not necessary that a demand should be made for the thing to be done, which is intended by the defendant should be done in consequence of the hurt; as it has been held that to support an indictment for an assault with intent to rob, no actual demand of money, &c., is necessary.—*R. v. Trusty*, 1 East P.C. 448; *R. v. Sherwin*, Id. 421. To bring a case under the provisions of Sect. 330, it must be proved that the hurt to the complainant was caused with intent to extort a confession of some offence or misconduct punishable under the Penal Code. Witchcraft is neither an offence nor misconduct within the meaning of this section, and it therefore does not amount to a case where the confession extorted by hurt or grievous hurt was in reference to a charge of witchcraft.—*Reg. v. Baboo Mondu*, 13 W.R. Crim. 23.

*Acts endangering Life.*

**Sect. 336. *Act endangering Life.***—Whoever does any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, which may extend to two hundred and fifty Rupees, or with both.

**Sect. 337. *Hurt caused by Act endangering Life.***—Whoever causes hurt to any person by doing an act so rashly or negligently as to endanger human life, or the personal safety of others, shall

be punished with imprisonment of either description for a term which may extend to six months, or with fine, which may extend to five hundred Rupees, or with both.

**Sect. 338.** *Grievous Hurt caused by Act endangering Life.*—Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand Rupees, or with both.

*Offences under Sect. 336 are triable by any magistrate; those under Sects. 337 and 338 by the magistrate of the first or second class. A summons should issue in the first instance. Police officers may arrest without a warrant. Defendants are bailable.*

*Evidence.*

Prove the doing of an act by the defendant so negligently as to endanger human life, &c.; or so as actually to cause hurt or grievous hurt. The negligence is the offence, and the result of that negligence merely goes to increase the punishment. There is therefore no necessity to prove any intention to do hurt or grievous hurt, or any knowledge that the act done was likely to cause hurt or grievous hurt. On these three sections see also the remarks on rash driving and negligence and negligent acts, pp. 237, 241.

Plying a boat thoroughly out of order and with a crack in it, and taking therein a hundred passengers, is not a negligent act endangering human life or the personal safety of passengers within Sect. 336, but should be charged as an offence under Sect. 282.—*Reg. v. Khoda Jacla and others*, 1 Bombay H.C. Rep. 13. The defendant was being driven in a carriage to her house through the streets of the town, between the hours of 7 and 8 P.M. The carriage was being driven at the ordinary rate, and in the middle of the road; the night was dark, and the carriage without lamps, owing to a violation of a distinct order of the accused, on discovering which, she ordered careful driving, and the horsekeeper and the coachman were shouting out to warn foot-passengers. The defendant's carriage came in contact with the complainant's father, an old, deaf man, who was thereupon knocked down and killed. Upon a reference to the High Court, it was held that the question for the Court was, whether there was any evidence that the death of



the deceased was induced by an act negligently and rashly directed by the accused; and further held, that there was no such evidence.—Madras High Ct. Rulings, 17th August 1871; 6 Madras H.C. Rep. App. 31.

*Wrongful Restraint and Confinement.*

**Sect. 339. *Wrongful Restraint.***—Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

*Exception.*—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

*Illustration.*

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

**Sect. 340. *Wrongful Confinement.***—Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said “wrongfully to confine” that person.

*Illustrations.*

- (a) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.
- (b) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

**Sect. 341. *Punishment for wrongful Restraint.***—Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred Rupees, or with both.

**Sect. 342. *Punishment for wrongful Confinement.***—Whoever

wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand Rupees, or with both.

**Sect. 343.** *Wrongful Confinement for three or more days.*—Whoever wrongfully confines any person for three days or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 344.** *Wrongful Confinement for ten or more days.*—Whoever wrongfully confines any person for ten days or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**Sect. 345.** *Wrongful Confinement when Writ has been issued for Liberation.*—Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any term of imprisonment to which he may be liable under any other section of this Code.

**Note.**—*Offences under Sect. 341 are triable by any magistrate; those under Sects. 342 and 343 by a magistrate of the first or second class; those under Sects. 344 and 345 by the Court of Session or magistrate of the first or second class. A summons should issue in the first instance. Defendants are bailable. Police officers may arrest without a warrant, except under Sect. 345.*

### *Charge.*

That you, the said A B, on or about the                      day of                      , at                      , did wrongfully restrain (or confine) a certain other person, to wit, C D (knowing at the time of such confinement that a writ for the liberation of the said C D had been duly issued); and that you, the said A B, have thereby committed an offence punishable under Sect. 341 (or 342, or 345) of the Indian Penal Code, and within, &c.

### *Evidence.*

Prove the restraint or confinement, as defined in Sects. 339 and 340. The restraint must be with the view of preventing any person from going in any direction in which he has a *right* to go. There-

fore, the cases of restraint and confinement under a warrant, or by virtue of the power given to constables to arrest in certain cases without a warrant, are excluded from the operation of these sections. But where a superintendent of police illegally wrote a letter to a person, directing him to present himself before a magistrate, and sent two constables to accompany him and prevent him from speaking to any one, it was held that this amounted to wrongful confinement.—*Parankusam Narasaya Pantulu v. Stuart*, 2 Mad. H.C. Rep. 396. If a police officer detain a person for a single hour, except on reasonable ground, justified by the circumstances of the case, he is guilty of wrongful confinement, and is not protected by Sect. 124 of the Crim. Pro. Code.—2 R.C.C.Cr. 70; and *Sheo Surun Sahai v. Mahomed Fazul Khan*, 10 W.R. Crim. 20.

The definition of imprisonment as given by Coleridge, J. in *Bird v. Jones*, 7 Q.B. 742, is as follows: "A prison may have its boundary large or narrow, visible and tangible, or, though real, still in the conception only; it may itself be moveable or fixed; but a boundary it must have, and that boundary the party imprisoned must be prevented from passing; he must be prevented from leaving that place, within the ambit of which the party imprisoning would confine him, except by prison-breach. Some confusion seems to me to arise from confounding imprisonment of the body with mere loss of freedom: it is one part of the definition of freedom to be able to go whithersoever one pleases; but imprisonment is something more than the mere loss of this power; it includes the notion of restraint within some limits defined by a will or power exterior to our own." It was under the authority of this case that the act of the superintendent of police, *supra*, was held to amount to wrongful confinement.

Under Sect. 345, the confinement must be proved; also that a writ for the liberation of the person so confined had been issued, and that the fact of its issue had come to the knowledge of the defendant: this need not be shown by proving that the writ for liberation had been served on him, for he is not charged with disobedience to the writ; but it will be sufficient to show by direct evidence, or by circumstances from which knowledge can be inferred, that he knew of the writ being issued. If the defendant be also charged under Sect. 174, p. 144, with disobedience to the writ, then

the actual service of it on him must be proved, as no one is responsible for disobedience to an order of any authority, unless it be shown that it has been legally and officially brought to his knowledge.

Under Sect. 344, fine alone is not a legal punishment.—Reg. v. Buheerjee bin Krishnaje, 1 Bombay H.C. Rep. 39.

*Aggravated Wrongful Confinement.*

**Sect. 346.** *Wrongful Confinement in Secret.*—Whoever wrongfully confines any person, in such a manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant, as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.

**Sect. 347.** *Wrongful Confinement to extort Property.*—Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security; or of constraining the person confined, or any person interested in such person, to do anything illegal, or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**Sect. 348.** *Wrongful Confinement to extort Confession.*—Whoever wrongfully confines any person, for the purpose of extorting from the person confined, or any person interested in the person confined, any confession or any information which may lead to the detection of an offence or misconduct; or for the purpose of constraining the person confined, or any person interested in the person confined, to restore, or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

*Note.*—*Offences under Sects. 346 and 347 are triable by the Court of Session or magistrate of the first or second class; those under Sect. 348, by the Court of Session or magistrate of the first class. A summons should issue in the first instance. Police officers may arrest without a warrant. Defendants are bailable.*

### *Criminal Force and Assault.*

**Sect. 349. Force.**—A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion, as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling; provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:

*First,* By his own bodily power.

*Secondly,* By disposing any substance in such a manner that the motion, or change or cessation of motion, takes place without any further act on his part or on the part of any other person.

*Thirdly,* By inducing any animal to move, to change its motion, or to cease to move.

**Sect. 350. Criminal Force.**—Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

### *Illustrations.*

- (a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or

if he himself take off her clothes—*R. v. Rosinski*, 1 Mood C.C. 12 ; parish officers cutting off the hair of a pauper in the poorhouse by force and against her will—*Forde v. Skinner*, 4 C. and P. 239 ; taking a new-born child from the mother, under pretence of taking it to an institution to be nursed, and instead, putting it into a bag, and hanging it on some palings by the wayside—*Reg. v. March*, 1 C. and K. 496 ; spitting in a man's face—6 Mod. 149 ; striking a horse upon which a man is riding, and thus causing him to be thrown—1 Mod. 24 ; *W. Jones*, 444 ; and every touching or laying hold (however trifling) of another's person or clothes in an angry, revengeful, rude, insolent, or hostile manner—1 Hawk. c. 62, s. 2 ; see also *Rawlings v. Till*, 3 M. and W. 28 ; *Coward v. Baddeley*, 4 H. and N. 478. All cases of trifling assaults will be met by Sect. 95 of the Penal Code, *ante*, p. 76.

A blow which is entirely accidental ; an injury received in playing at any lawful sport by consent, provided the injury be not the result of any unfair advantage taken by the party doing it ; reasonable chastisement of a child by its parent or guardian ; of a scholar by his schoolmaster ; a blow or any other violence necessary for self-defence ; necessary force used in exercise of the right of defence of private property ; the use of force by a public servant within the sphere of his duties, are not offences under these or any other sections of the Penal Code.

A person tried and acquitted on a charge of using criminal force, under Sect. 352, cannot be tried afterwards, in respect of the same criminal matter, on a charge of causing hurt.—*Kaptan v. Smith* 16 W.R. Crim. 3.

### *Assault in Execution.*

**Sect. 353. *Assault in Execution of Duty***—Whoever assaults or uses criminal force to any person being a public servant, in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

to be boiling. Here A intentionally, by his own bodily power, causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling: A has therefore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.

- (h) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear, or annoyance to Z, he uses criminal force to Z.

**Sect. 351. Assault.**—Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

*Explanation.*—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

#### *Illustrations.*

- (a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.
- (b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.
- (c) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

**Sect. 352. Punishment for Assault, &c.**—Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with

imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred Rupees, or with both.

*Explanation.*—Grave and sudden provocation will not mitigate the punishment for an offence under this Section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence—or

If the provocation is given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant—or

If the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

**Note.**—For Sect. 353, see p. 299.

**Sect. 358. *Assault on Provocation.***—Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred Rupees, or with both.

*Explanation.*—The last section is subject to the same explanation as Sect. 352 (*supra*).

Sects. 489 and 490 of the Criminal Procedure Code provide for recognisances to keep the peace, either with or without sureties, after a conviction for any of these offences.

*Triable by any magistrate. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

For Sect. 359, see p. 303.

### *Charge.*

That you, the said A B, on or about the                      day of                      ,  
at                      , assaulted (*or used criminal force to*) C D (otherwise  
than), on grave and sudden provocation given by the said C D to  
the said A B; and that you have thereby committed an offence  
punishable under Sect. (358) 352 of the Indian Penal Code, and  
within, &c.

### *Evidence.*

Prove some act done by the defendant which brings his conduct



within the words either of Sect. 350 or 351. It must also be shown under what circumstances the act was done, whether on grave and sudden provocation given by the person on whom the act was committed or otherwise, and this is a duty laid upon the prosecution, for it is necessary to allege the presence or absence of these extenuating circumstances in the charge.

The mathematical definition of force is "anything which causes or tends to cause a change in the state of any body, whether the state be one of motion or rest." This definition, slightly elaborated and explained, the Commissioners have adopted. If force be used under the circumstances detailed in Sect. 350, it is criminal force. The difference between criminal force and assault is that the latter is something less than the former, the force being cut short before the blow actually falls. Under the Penal Code the term "assault" only includes a portion of what are, under the English law, assaults—*i.e.*, that portion which are attempts to commit a forcible crime against the person of another. Presenting a loaded gun at a man who is within range of the gun is an assault; so is pointing a pitchfork at him, when within reach of it.—1 Hawk. c. 62, s. 1. But if a man strike at another, but at such a distance that he cannot by any possibility touch him, it is no assault.—Com. Dig., Battery (c). But if A advance in a threatening attitude towards B to strike him, and be stopped just before he is near enough for his blow to take effect, it is an assault.—*Stephens v. Myers*, 4 C. and P. 349.

An assault has been defined in the High Court at Bombay as "gestures calculated to excite the apprehension that the person making them is about to use criminal force, coupled with a present ability to carry the gestures into effect. Words do not amount to an assault, but, accompanied by gestures, they may amount to one, or they may show that the gestures even do not constitute an assault. But to do this it must be clearly shown to the person threatened that the threatener has no intention to use immediate criminal force."—*Cama v. Morgan*, 1 Bombay H.C. Rep. 205.

The other cases of assault under the English law would under the Penal Code amount to the use of criminal force. Thus:—A master taking indecent liberties with a female scholar, without her consent, though she does not resist—*Reg. v. Day*, 9 C. and P. 722; a medical man unnecessarily stripping a female patient naked, under the pretence that he cannot otherwise judge of her illness,

if he himself take off her clothes—*R. v. Rosinski*, 1 Mood C.C. 12 ; parish officers cutting off the hair of a pauper in the poorhouse by force and against her will—*Forde v. Skinner*, 4 C. and P. 239 ; taking a new-born child from the mother, under pretence of taking it to an institution to be nursed, and instead, putting it into a bag, and hanging it on some palings by the wayside—*Reg. v. March*, 1 C. and K. 496 ; spitting in a man's face—6 Mod. 149 ; striking a horse upon which a man is riding, and thus causing him to be thrown—1 Mod. 24 ; *W. Jones*, 444 ; and every touching or laying hold (however trifling) of another's person or clothes in an angry, revengeful, rude, insolent, or hostile manner—1 Hawk. c. 62, s. 2 ; see also *Rawlings v. Till*, 3 M. and W. 28 ; *Coward v. Baddeley*, 4 H. and N. 478. All cases of trifling assaults will be met by Sect. 95 of the Penal Code, *ante*, p. 76.

A blow which is entirely accidental ; an injury received in playing at any lawful sport by consent, provided the injury be not the result of any unfair advantage taken by the party doing it ; reasonable chastisement of a child by its parent or guardian ; of a scholar by his schoolmaster ; a blow or any other violence necessary for self-defence ; necessary force used in exercise of the right of defence of private property ; the use of force by a public servant within the sphere of his duties, are not offences under these or any other sections of the Penal Code.

A person tried and acquitted on a charge of using criminal force, under Sect. 352, cannot be tried afterwards, in respect of the same criminal matter, on a charge of causing hurt.—*Kaptan v. Smith* 16 W.R. Crim. 3.

### *Assault in Execution.*

**Sect. 353. *Assault in Execution of Duty***—Whoever assaults or uses criminal force to any person being a public servant, in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Note.**—Sects. 489, 490, Criminal Procedure Code, provide for Recognizances after conviction.

*Triable by a Magistrate of the first or second class. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are bailable.*

### *Charge.*

That you, the said A B, on or about the                      day of                      , at                      , did assault (or use criminal force to) C D, a public servant, to wit, a peon, in the execution of his duty as such public servant; and that you, the said A B, have thereby committed an offence punishable under Sect. 353 of the Indian Penal Code, and within, &c.

### *Evidence.*

Prove the assault or criminal force, and that it was offered to the complainant as a public servant acting in the execution of his duty. Or else prove that the offence was committed with the intention, or in consequence of the other circumstances, mentioned in the section. A Collectorate *Peadah*, who had been deputed to keep the peace during a distraint, was assaulted by the prisoner, while on his road to execute the order with which he had been entrusted, the prisoner attempting to deprive him of his *purwannah*. It was held that the prisoner was rightly convicted of assaulting a public servant in the execution of his duty.—Reg. v. Methi Mulah, 13 W.R. Crim. 49.

### *Assault with intent to Outrage.*

**Sect. 354. Assault with intent to Outrage the Modesty of a Woman.**—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 355. Assault with intent to Dishonour.**—Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Note.**—Act vi. of 1864, Sect. 4, provides for whipping as a punishment, in addition to any other which may be awarded, on conviction for a second offence under Sect. 354.

Sects. 489, 490 of the Criminal Procedure Code provide for Recognizances after conviction.

*Triable by a Magistrate of the first or second class. A warrant should issue in the first instance under Sect. 354; a summons under Sect. 355. Police Officers may arrest without a warrant under Sect. 354, but not under Sect. 355. Defendants are bailable.*

#### *Charge under Sect. 354.*

That you, on or about the                      day of                      , at                      , did assault (*or use criminal force to*) a certain woman, to wit, C D, intending by such assault (*or criminal force*) to outrage the modesty of the said C D; and that you have thereby committed an offence punishable under Sect. 354 of the Indian Penal Code, and within, &c.

#### *Under Sect. 355.*

That you, on or about the                      day of                      , at                      , did assault (*or use criminal force to*) one C D, otherwise than on grave and sudden provocation given by the said C D, intending by such assault (*or criminal force*) to dishonour the said C D, and that you have thereby committed an offence punishable under Sect. 355 of the Indian Penal Code, and within, &c.

#### *Evidence.*

The assault, or criminal force, must be proved under the foregoing sections. Under Sect. 354, woman means a female human being of any age, Sect. 10. There is no definition of what is an outrage to female modesty. This will differ, according to the country and the race to which the woman belongs. In a place where many women consider themselves as dishonoured by exposure to the gaze of strange males, a man rudely thrusting his head into the covered palkee of a woman of rank, if she be a native, may well be deemed an outrage to female modesty. Such an act done to a European lady would not be of such a heinous nature. Nor, in the former case, would the act be so reprehensible as that of turning up the clothes of a female, whether in the public streets or else-

where, without her consent. There is a great difference in the nature of offences of this kind, as may be gathered from the fact that, for a second offence, the offender may be punished with whipping, some may be almost harmless, while others are of the gravest description.

The question as to what will dishonour a man will also much differ in various cases, and in all it will be a matter of fact to be proved, in most instances solely by the oath of the complainant, unless the act be one which is universally admitted to be one causing dishonour.

*Assault in attempting to Steal or Confine.*

**Sect. 356.** *Assault in attempting to Steal.*—Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 357.** *Assault in attempting to Confine.*—Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, which may extend to one thousand Rupees, or with both.

**Note.**—For Sect. 358 see p. 297. Sects. 489, 490, Criminal Procedure Code, provide for Recognizances after conviction.

*Triable by any Magistrate. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable under Sect. 356, but they are under Sect. 357.*

*Charge.*

That you, on or about the                      day of                      , at                      , did assault (or use criminal force to) C D, in attempting to commit theft on certain property, to wit, a gold watch and chain, then being worn by the said C D; and that you have thereby committed an offence punishable under Sect. 356 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove that the defendant attempted to rob, or wrongfully to confine the complainant, and in such attempt committed an assault, &c.

*Abduction, &c.*

**Sect. 359. *Kidnapping.***—Kidnapping is of two kinds; kidnapping from British India, and kidnapping from lawful guardianship.

**Sect. 360. *Kidnapping from British India.***—Whoever conveys any person beyond the limits of British India, without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from British India.

**Sect. 361. *Kidnapping from Lawful Guardianship.***—Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

*Explanation.*—The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

*Exception.*—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

**Sect. 362. *Abduction.***—Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

**Sect. 363. *Punishment for Kidnapping.***—Whoever kidnaps any person from British India, or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

By Sect. 71 of the Indian Emigration Act, VII. of 1871, it is enacted that “whoever, except under and in conformity with the provisions of this Act, makes any contract with any native of India for labour to be performed in any place beyond British India, to which emigration is not authorised under this Act, shall be deemed to have committed the offence specified in Sect. 363 of the Indian Penal Code. And whoever, knowingly, enables or assists any native of India to migrate to any such place, or aids in or abets the emigration of any native of India to any such place, shall be deemed to

have abetted the commission of that offence." And by Sect. 82 of the same Act it is enacted that "all prosecutions under this Act shall be instituted on information laid at the instance of an emigration agent, or of a protector of emigrants, or of an officer appointed for the purpose by the local Government, before a magistrate of police, or before a magistrate, according as they shall be instituted for offences committed within, or for offences committed without, the limits of the towns of Calcutta, Madras, and Bombay."

**Sect. 364. *Kidnapping or Abducting in order to Murder.***—Whoever kidnaps or abducts any person, in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

*Illustrations.*

- (a) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed as an idol. A has committed the offence defined in this section.
- (b) A forcibly carries or entices B away from his home, in order that B may be murdered. A has committed the offence defined in this section.

**Sect. 365. *Kidnapping, &c., in order to Confine Secretly.***—Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Sect. 366. *Kidnapping a Woman to compel Marriage, &c.***—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will; or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 367. *Kidnapping, &c., in order to subject to Slavery, &c.***—Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger

of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person; or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 368.** *Concealing a kidnapped Person.*—Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or keeps such person in confinement, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose, as that with or for which he conceals or detains such person in confinement.

**Sect. 369.** *Kidnapping, &c., Child to steal Property.*—Whoever kidnaps or abducts any child under the age of ten years, with the intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Note.**—*These offences are triable by the Court of Session, with the exception of those under Sect. 363, which are triable by the Court of Session or magistrate of the first class. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.*

### *Charge.*

That you, on or about the                      day of                      , at                      , did kidnap a certain person, to wit, C D, from British India (or from lawful guardianship, or with the intention that such person should be murdered), and that you have thereby committed an offence punishable under Sect. 363 (or 364) of the Indian Penal Code, and within, &c.

### *Evidence.*

Under these sections kidnapping is an offence irrespective of any intent with which it is committed. To support a charge of kidnapping from lawful guardianship, it must be shown that the accused *took or enticed away* from lawful guardianship the person alleged to have been kidnapped—*Reg. v. Neela Bebee*, 10 W.R. Crim. 33;



without consent of the guardian.—Reg. v. Mohim Chunder Sil, 16 W.R. Crim. 42.

Abduction is not an offence *under these sections*, unless it be with one of the intents expressly provided against. The intent with which the abduction took place must be specified in the warrant and charge, and be proved at the trial.—*In re Bidhoomookhee Debee*, 6 Ben. L.R. App. 129; and 15 W.R. Crim. 4. It must also be shown that there was some force or deceit practised on the person abducted.—Reg. v. Komul Dass, 2 W.R. Crim. 7.

The word “take” implies a bodily removal by the defendant, not necessarily by force, a mere leading of a not unwilling child would be sufficient. “Enticing” is an act of the defendant by which the person kidnapped is induced of his own accord to go to the kidnapper. The means used to entice need not be deceitful; they may be the expectation of a present, which is actually gratified. In abduction, however, the means must be either forcible or deceitful.

The general principles as to the principal offence involved in these sections are admirably laid down by Bramwell, B., in the case of Reg. v. Ollifier, 10 Cox’s Crim. Cases, 402,—“If a young woman leaves her father’s house without any persuasion, inducement, or blandishment held out to her by a man, so that she has fairly got away from home, and then goes to him, although it may be his moral duty to return her to her parents’ custody, yet his not doing so is no infringement of this Act of Parliament, for the Act does not say he shall restore her, but only that he shall not take her away.”—See also 5 R.J. and P. 152. “It is, however, equally clear that, if the girl, acting under his persuasion, leaves her father’s house, although he is not present at the moment, yet if he avails himself of that leaving, which took place at his persuasion, that would be a taking her out of the father’s possession, because the persuasion would be the motive cause of her leaving. Again, although she may not leave at the appointed time, and although he may not wish that she should have left at that particular time, yet if, finding she has left, he avails himself of that to induce her to continue away from her father’s custody, in my judgment he is also guilty, if his persuasion operated on her mind so as to induce her to leave.” If a woman be forcibly taken away, and afterwards married, or defiled with her own consent, it is within the provisions of these sections, for the offender is not to escape by having pre-

vailed over the weakness of a woman whom he originally got into his power by such base means.—*Fulwood's Case*, Cro. Car. 488 ; *Swenden's Case*, 5 St. Tr. 450 ; 1 Hale, 660. And so, too, if she be taken away and married with her own consent, if this be effected by means of fraud ; for she cannot be considered, while under the influence of fraud, to be a free agent.—*R. v. Wakefield*, Lancaster Assizes, 1827. Under Sect. 361, it is immaterial whether the girl consents or not, and the taking need not be by force, actual or constructive.—*Reg. v. Mankletow*, Dears. C.C. 159. It is no legal excuse that the defendant made use of no other means than the common blandishments of a lover to induce her to elope with him.—*R. v. Twistleton*, 1 Lev. 257 ; 1 Hawk, c. 44, s. 10. Where a girl was persuaded by the defendant to leave her father's house and go away with him, without the father's consent, and accordingly left her home alone by a preconcerted arrangement between them, and went to a place appointed, where she was met by the prisoner, and they then went away together, without the intention of returning, this was held to be a taking of the girl out of the father's possession, and certainly it would amount to an enticing.—*Reg. v. Mankletow*, *supra*. So where the defendant, by concert with the girl, met her, and stayed with her away from her father's house for several nights, sleeping with her ; and the jury found that the father did not consent, and that the defendant knew that he did not, and that he took the girl away with him in order to gratify his passions, and then let her return home, and not with the intention of keeping her away from her home permanently, the conviction was held right.—*Reg. v. Timmins*, 1 Bell, C.C. 276. When a girl under sixteen was found in the streets by herself, and seduced away, it was held that she was not taken out of the possession of her father, although he was living in the same place, and the girl was living with him.—*Reg. v. Green*, 3 F. and F. 274. A was indicted for fraudulently alluring C out of the possession of her mother and stepfather, the latter having the lawful care of her, and B with being an accessory before the fact. C was sent by her mother to live with her grandmother. Instead of going there, she went to B's house, and did not return home when desired by her mother. After remaining with B a month, she left with A, her paternal uncle, and was married to him without her mother's knowledge. It was held that there was no evidence that the alluring was fraudulent, or that the girl was

taken out of her mother's possession, and that the facts did not support the indictment.—*Reg. v. Burrell*, 1 L.R. 354. These illustrations are all of cases of abduction of women, but they will sufficiently illustrate the principles involved in the interpretation of the foregoing sections.

If the offence be under Sect. 361, the child must be shown to be under fourteen if a male, and under sixteen if a female, and it will be no defence to say that the accused did not know the child was under the age, but thought he or she was over the specified age, unless he has substantial ground for supposing that such is the fact, so as to bring the case within Sect. 79 of the Penal Code, *ante*, p. 15; for it was ruled on the case of *Reg. v. Ollifier*, *supra*, that a man deals with an unmarried girl at his peril, and in that case the fact that she had told him she was seventeen was held not to excuse him.—See also *Reg. v. Robins*, 1 F. and F. 50, where Cockburn, C.J., ruled to the same effect. Under this section the consent of the girl is immaterial, and neither force nor fraud form elements of the offence, as they do under Sect. 362.—*Reg. v. Bhungee Ahur*, 2 W.R.C.C. 5.

The fact that a betrothal, not amounting to a marriage or transfer of guardianship, has taken place between the accused and the girl, is no answer to the charge, though it may diminish the heinousness of the offence.—5 R.J. and P. 149.

Under Sect. 363 a subject of an independent state is amenable to the British courts for the offence of kidnapping from British India, though if the person so kidnapped were murdered beyond our territories there would be no jurisdiction in respect of the homicide.—1 W.R.C.C. 89.

If the charge be framed under Sect. 364, or any of the following sections, the intent must be laid, or proved as laid, either directly or circumstantially.

Where a procuress induced a married woman of the age of twenty to leave her husband, and the facts showed that the wife "had made her deliberate choice, and was determined of her own free will to leave her husband, and become a prostitute in Calcutta," the Bengal High Court held that no conviction could be sustained under Sect. 366, but that there was quite sufficient evidence to convict the prisoner of enticing under Sect. 498, "for whatever the wife's secret inclinations were, she would have had no opportunity

of carrying them out had not the prisoner interposed.—1 W.R. Cr. C. 45.

*Trafficking in Human Beings.*

**Sect. 370.** *Buying, &c., any Person as a Slave.*—Whoever imports, exports, removes, buys, sells, or disposes of any person as a slave, or accepts, receives, or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Sect. 371.** *Habitual dealing in Slaves.*—Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

**Sect. 372.** *Selling of any Minor for purposes of Prostitution, &c.*—Whoever sells, lets to hire, or otherwise disposes of any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose; or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 373.** *Buying of any Minor for purposes of Prostitution.*—Whoever buys, hires, or otherwise obtains possession of any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 374.** *Unlawful compulsory Labour.*—Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**Note.**—*Offences under Sects. 370 and 371 are triable by the Court of Session; those under Sects. 372, 373, by the Court of Session or a magistrate of the first class; and those under Sect. 374, by any magistrate. A warrant should issue in the first instance.* Police

*officers may arrest without a warrant, except under Sect. 370. Defendants are bailable under Sects. 370 and 374, but not under Sects. 371-373.*

### *Evidence.*

The dedication of a minor girl, under the age of sixteen years, to the service of a Hindoo temple, by the performance of the *shej* ceremony, where it was shown that it was almost invariably the case that girls so dedicated led a life of prostitution, was held to be a disposing of such minor, knowing she would be likely to be used for the purposes of prostitution.—*Reg. v. Jaili Bhaivin*, 6 Bombay H.C. Rep. C.C. 60. So, too, where girls were disposed of and registered as dancing-girls of a pagoda for the purpose of being brought up as such, “it being abundantly proved that girls so sold and so registered are brought up as prostitutes, and that one principal purpose of such a transaction was that they should be so brought up.”—*Ex parte Padmavati*, 5 Madras H.C. Rep. 415.

Where the prisoner met a girl, eleven years old, in a street, and promised to give her a pice if she would accompany him into an uninhabited house close by, and allow him to have sexual intercourse with her, and the girl went willingly, and they were detected in the act, the girl having gone out without permission, not having attained the age of puberty, and the evidence tending to show that she had not had sexual intercourse before, it was held that the prisoner had not committed any offence under Sect. 373.—*Reg. v. Shaikh Ali*, 5 Madras H.C. Rep. 473.

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## SEXUAL OFFENCES.

### *Rape.*

**Sect. 375. *Rape.***—A man is said to commit “rape,” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions :—

*First.* Against her will.

*Secondly.* Without her consent.

*Thirdly.* With her consent, when her consent has been obtained by putting her in fear of death or of hurt.

*Fourthly.* With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man, to whom she is or believes herself to be married.

*Fifthly.* With or without her consent, when she is under ten years of age.

*Explanation.*—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

*Exception.*—Sexual intercourse by a man with his own wife, the wife not being under ten years of age, is not rape.

**Sect. 376. *Punishment for Rape.***—Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Note.*—Act vi. of 1864, Sect. 4, permits whipping to be added to above punishment on second conviction for rape.

*Triable by the Court of Session.* A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.

### *Charge.*

That you, on or about the                      day of                      , at                      , did commit rape, to wit, on one C D; and that you have thereby committed an offence punishable under Sect. 376 of the Indian Penal Code, and within, &c.

### *Evidence.*

Under the English law, if it be proved that the defendant is under the age of fourteen years, he must be acquitted, whatever the nature of the evidence against him may be; for a boy under the age of fourteen years is presumed by that law incapable of committing a rape.—1 Hale, 631. There is no provision of a similar nature in the Penal Code, and therefore as far as legislative enactment goes, any male above the age of seven might be convicted of this offence, though it would of course be necessary for the prosecution to show that the accused had attained the full state of

puberty, and up to that time I should very much question whether a boy can be convicted of an attempt to commit a rape, although the strict interpretation of the two illustrations to Sect. 511 would seem to point to the opposite conclusion, provided the accused at the time of the attempt was physically in a state to effect some penetration. The power to have full connection is, however, so much of the essence of the offence that it would be difficult to say that a child who was physically unable to commit the full offence had "attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion," so as to be guilty of committing the attempt.

A man may commit a rape upon his wife if she be under the age of ten years. In a country where marriages among Mahometans and Hindoos are usually contracted before the age of puberty, it is necessary to prevent men from prematurely taking advantage of their marital rights, although, in most instances, as the wife resides with her relations till she is old enough to go home to her husband, their protection is sufficient. A husband and a boy under the age of puberty may, however, be principals in the second degree, and be punished for aiding and abetting.—1 Hale, 620, 639; *R. v. Eldershaw*, 3 C. and P. 396.

The act must be *against the will of a woman*. It is no excuse that she consented at first, if the offence was afterwards committed by force against her will; nor is it an excuse that she consented after the fact—1 Hawk. c. 41, s. 7; nor does the cessation of a genuine resistance amount to consent.—1 W.R.C.C. 2. Even that the woman was a common whore, or the concubine of the ravisher, is no excuse—1 Hale, 729; although such circumstances should operate strongly with the jury as to the probability of the fact that connection was had with the woman against her consent.

Or *without her consent*. If the connection took place while the woman was drunk, the liquor having been given her by the defendant (although only for the purpose of exciting her), it is rape.—*Reg. v. Camplin*, 1 Den. C.C. 89. Or if the connection was with a woman of weak intellect, incapable of distinguishing right from wrong, and the jury found she was incapable of giving consent, or of exercising any judgment upon the matter, and that (though she made no resistance) the defendant had carnal knowledge of her by force, and without her consent, that is a rape.—*Reg. v. Fletcher*, 2

Dears. and B. 63. In another case, the prosecutrix was an idiot girl. The prisoner admitted having had connection with her, but alleged consent. The girl was capable of recognising and describing the prisoner, but there was no evidence against him but the fact of connection and the imbecile state of the girl. It was held that, notwithstanding the girl was an idiot, there must be some evidence that the act was without her consent, and therefore there was no evidence to go to the jury.—Reg. v. Fletcher, 12 Jur. N.S. 505.

*Or, with her consent, where that consent has been obtained through fear of death or hurt.*

*Or, with her consent, when the man knows he is not her husband, and that her consent is given because she believes he is another man, to whom she is or believes herself to be married.* In England this is not a rape, but only an assault. In India, however, where, after the marriage-contract has been entered into, the parties do not see each other for a long space of time, it is necessary to protect women from the fraud of licentious men, and also to afford protection to a man who has connection with a woman to whom he believes he has been married in youth.

*Or, with or without her consent, when she is under ten years of age.* In this case, the age of the girl must be strictly proved. Where the offence was committed on the 5th of February 1832, and the child's father proved that on his return home, after an absence of a few days, on the 9th of February 1822, he found the child had been born, and was told by the grandmother that she had been born the day before, and the register of baptism showed that the child had been baptised on the 9th of February 1822; this evidence was held not to be sufficient to prove the age of the child.—R. v. Wedge, 5 C. and P. 298. As a girl under ten years of age cannot consent to a man having connection with her, so it has been held that the consent of a girl under that age to an attempt to have carnal knowledge of her is no answer to an indictment for such an attempt.—Reg. v. Beale, 12 Jur. N.S. 12.

On a charge of rape, the fact that shortly after the commission of the crime the prosecutrix made a complaint relating to it, together with the circumstances under which and the terms in which she made it, may be given in evidence as relevant facts. But if, without making a complaint, she merely said she had been ravished,



that is not relevant as conduct, though it may be relevant as a dying declaration, or as corroborative evidence.—Indian Evidence Act, 1872, Sect. 8, Ill. j.

A dying declaration of a deceased person is evidence in a case of rape.—Reg. v. Bissorunjun Mookerjee, Calcutta H.C., 1 Madras Jurist, 368. This decision has been affirmed by legislative authority in the Indian Evidence Act, 1872, Sect. 32, Ill. a.

As to the punishment for an attempt to commit a rape, see Reg. v. Meriam, 1 Ben L.R.A. Cr. J. 5; and 10 W.R. Crim. 10.

### *Unnatural Offences.*

**Sect. 377. Unnatural Offences.**—Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation.*—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

**Note.**—Act vi. of 1864, Sect. 4. Whipping may be added as a punishment on a conviction for a second offence.

*Triable by the Court of Session.* A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.

### *Evidence.*

The evidence is the same as in rape. There are, however, two exceptions; first, that it is not necessary to prove the offence to have been committed against or without the consent of the person upon whom it is perpetrated; and secondly, both agent and patient (if consenting) are equally guilty. A married woman who consents to her husband's committing an unnatural offence with her, is an accomplice, and, as such, her evidence requires corroboration, although consent or non-consent is quite immaterial to the offence.—Reg. v. Jellyman, 8 C. and P. 604. If it be committed on a child under seven, the agent is guilty only; if on one between seven and twelve, the agent is guilty only, unless the patient is sufficiently matured in understanding to be able to comprehend the nature of the offence.—See the case of Reg. v. Allen, 18 L.J.N.S.M.C. 72.

Where the defendant forced open a child's mouth, and put in his private parts, and proceeded to the completion of his lust, the judges were of opinion that this did not constitute the offence of sodomy.—*R. v. Jacobs*, R. and R. 231.

A person convicted a second time of falsely charging another with having committed an unnatural offence may be punished with whipping, in addition to any other punishment to which he may be liable.—Act vi. of 1864, Sect 4.

## CHAPTER XVII.

## OFFENCES AGAINST PROPERTY.

## MISAPPROPRIATION OF PROPERTY.

*Theft.*

Sect. 378. *Theft*.—Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

*Explanation 1*.—A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

*Explanation 2*.—A moving, effected by the same act which effects the severance, may be a theft.

*Explanation 3*.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

*Explanation 4*.—A person who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

*Explanation 5*.—The consent mentioned in the definition may be expressed or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

*Illustrations.*

- (a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession, without Z's consent. Here, as soon as A has severed the tree, in order to such taking, he has committed theft.
- (b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.
- (c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.
- (d) A, being Z's servant, and intrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.
- (e) Z, going on a journey, intrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.
- (f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.
- (g) A finds a ring lying on the high-road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.
- (h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding-place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

- (z) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.
- (j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.
- (k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.
- (l) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.
- (m) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent, for the purpose merely of reading it, and with the intention of returning it. Here it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.
- (n) A asks charity from Z's wife. She gives A money, food, and clothes, which A knows to belong to Z, her husband. Here it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.
- (o) A is the paramour of Z's wife. She gives A valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(p) A in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

**Sect. 379. *Punishment for Theft.***—Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Note.**—Sect. 75 provides for an increase of punishment for a second offence.

**Act vi. of 1864.** By Sects. 2 and 3, whipping may be substituted as a punishment for a first or second offence.

See Sect. 456 of the Criminal Procedure Code.

*Triable by any magistrate. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.*

#### *Charge.*

That you, the said A B, on or about the                      day of                      , at                      , dishonestly did take certain property, to wit, one gold watch, out of the possession of one C D, without the consent of the said C D, and that you, the said A B, have thereby committed an offence punishable under Sect. 379 of the Indian Penal Code, and within, &c.

#### *Evidence.*

The property stated in the charge should be proved as laid, or else the charge should be amended. It is not necessary for the prosecutor to prove the theft of all the things laid in the charge; it will be sufficient to show that some have been taken. Goods may be described by the name they are known in trade; as, for instance, a set of new handkerchiefs in the piece may be described as so many handkerchiefs, though they are not separated from each other, if the pattern designate each, and they are considered in trade as so many handkerchiefs.—*R. v. Nibbs*, R. and R. 25. Coin may be described as so much money, Act xviii. of 1862, Sect. 25. Ingots of tin, or bars of iron, may be described as so many pounds weight of tin or iron; but when an article has obtained, in common parlance, a name of its own, it would be wrong to describe it by the name of the material of which it is composed.—*Reg. v. Mansfield*, C. and Mar. 140. A charge of theft of live animals need not state that they were alive, because

the law will presume them to be so, unless the contrary be stated; but if, when stolen, the animals were dead, that fact should be stated—*R. v. Edwards*, R. and R. 497; *R. v. Halloway*, 1 C. and P. 198; unless the animal have the same appellation when dead as it had alive, and it make no difference to the charge whether it were alive or dead.—*R. v. Puckering*, 1 Mood, C.C. 242.

The things stolen must be moveable property, as defined by Sect. 22. A boat may be the subject of theft, for although, for some purposes under the Penal Code, it is classed with a house, it does not therefore cease to be moveable property.—*Reg. v. Mehar Dowalia*, 16 W.R. Crim. 63. Persons may be convicted of mischief in cutting down a tree fixed to the freehold, and then for subsequently stealing the tree so cut down.—*Reg. v. Narayan Krishna*, and another, 2 Bombay H.C. Rep. 416. But a prisoner cannot be convicted of mischief in killing a buffalo, and then of theft in taking away its carcase.—*Reg. v. Sahrai*, 8 W.R. Crim. 31.

The property stolen must have been in the possession of the prosecutor, either personally or by his wife, clerk, or servant.—Sect. 27. p. 25.—*Hossenev Sheikh v. Rajkrishna Chatterji*, 20 W.R. Crim. 80. So persons catching fish are not guilty of theft, it being impossible to say the fish are in the possession of any one.—*Hurimoti Moddock v. Denonath Malo*, 19 W.R. Crim. 47; and *Bhusun Parni v. Denonath Banerji*, 20 W.R. Crim. 15. In the latter case, the Court refused to inquire whether taking fish from a river might be an offence under any other section of the Penal Code, while not coming under that relating to theft. There is no need to prove whose the stolen property is, or whether in fact it is the property of any one. But theft cannot be committed in respect to a thing of which the prosecutor has given up both possession and property. Thus if a man digs up the carcase of a bullock, which the owner, suspecting to have been poisoned, caused to be buried, he cannot be convicted of theft.—*Madras, H.C. Ruling*, 5 February 1869; 5 *Madras H.C. Rep. App.* 30.

The smallest amount of moving will satisfy the requirements of the term "take." The property must be taken dishonestly, *i.e.*, with the intention of permanently depriving the possessor of the possession of it, or in the words of the Code itself, with the "intention of causing wrongful gain to one person or wrongful loss to another person." The taking of almost valueless pods from a

tree standing on Government ground is not theft.—*Reg. v. Kasya bin Ravji*, 5 Bomb. H.C. Rep. C.C. 35. The taking of property belonging to a firm, by a member of a firm, from one of its servants, is not theft, although the taking be against the will of the servant.—*Kiamudden v. Allah Buksh*, 6 Ben. L.R. App. 133, and 15 W.R. Crim. 51. Theft is not committed when property is taken under a claim of right; but the mere assertion of a claim of property or right, or the mere existence of a doubt as right, is not sufficient to justify an acquittal in a case of plunder of crops; the claim to the property must be shown by evidence to be fair and good.—*Nassib Chowdhry v. Nannoo Chowdhry*, 15 W.R. Crim. 47. See also the case of *Reg. v. Kali Charan Misser*, 7 Ben. L.R. 55, and 16 W.R. Crim. 18.

Where the prosecutor parts with the possession of any property, without any trick being played upon him, to another person in order that this person may dispose of the property for him, and after disposing of it, he appropriates the proceeds to his own use, this is not a theft of the property so delivered, though it may amount to a criminal breach of trust.

If the goods of a husband be taken with the consent or privity of the wife, it is not a theft, as she has an implied authority to dispose of them; and it was so ruled by Scotland, C.J., 4th Madras Sess. 1864, in *Reg. v. Venkata Reddy*. But if a woman steal the goods of her husband, and give them to her avowterer, who knowing it, carries them away, the avowterer is guilty of stealing—*Dalt. c. 104*; and where a stranger took the goods of the husband *jointly* with the wife, this has been holden to be stealing in him, he being her adulterer—*R. v. Tolfree*, 1 Mood C.C. 243; *Reg. v. Featherstone, Dears. C.C. 369*; and so, too, though no adultery have then been committed, but the goods are taken with the intent that the wife shall elope and live in adultery with the stranger—*Reg. v. Tollett, C. and Mar. 112*; *Reg. v. Thompson*, 1 Den. C.C. 549. Where the prisoner, who was in the employment of the prosecutor, went away with the intention of committing adultery with the prosecutor's wife, and, when going away, was concerned in taking some of his property, although the wife swore that the prisoner had by her orders assisted in taking away the property, the court held that he was properly convicted of larceny.—*Reg. v. Mutters*, 11 Jur. N.S. 144. An adulterer, however, cannot be con-



victed of stealing the goods of the husband brought by the wife to his house, in which the adultery is afterwards committed, merely upon evidence of their being there, unless they be traced to his personal possession.—Reg. v. Rosenberg, 1 C. and K. 233. Possession of the stolen goods is often the only evidence available as to the theft. Sect. 114, illustration (a), of the Evidence Act I. of 1872, is to the effect that “the court may presume that a man who is in possession of stolen goods *soon after the theft* is either the thief, or has received the goods knowing them to be stolen, unless he can account for his possession.”

The illustrations accompanying Sect. 378 are so varied, and the provisions of the Criminal Procedure Code so thoroughly meet all classes of offences related to theft, that it would be useless to introduce here any further illustrations from English cases.

It has been ruled that the taking of property by the prisoner in satisfaction of a debt due to him by the prosecutor is a theft.—1 R.C.C. Cr. 60. So, also, where the prisoner took the prosecutor's bullocks, and distributed them among the creditors of the latter.—4 R. J. and P. 417.

It has been held in India that a Hindoo husband cannot be convicted of robbing his wife, the wife, according to Hindoo law, being completely under the control of her husband.—1 Mor. Dig. 129, s. 185. On this Mr Mayne says: “I doubt whether this argument in favour of a Hindoo husband who dishonestly takes his wife's Stridhana, over which she has absolute control—1 Stra. H.L. 27, 28: or in favour of a Mohamedan husband, who gets no right over his wife's property by marriage—Mac. M.L. 254; is correct.” But this comment seems to be founded on a misapprehension of the offence of the theft under the Penal Code. In England, the offence of stealing consists in depriving a person of something which is his *property*, and where a person simply intrusted with anything is robbed of it, he is said to have a *special property* in it. In India, the offence of theft consists in taking something out of the *possession* of another. Now a wife's property is either actually or by construction of law under Sect. 27 of the Penal Code, *ante*, p. 25, in the possession of the husband; hence if he take it, he merely takes what is in his own possession, and all that can be done is to make him account for what he has used, as a trustee. In fact, under the Hindoo law, a husband is justified, under certain circumstances,

even as against his wife's consent, in taking and making use of her private property. A ruling of Scotland, C.J., quoted by Mr Mayne, seems very much in point in this case against Mr Mayne's view. In *Reg. v. Ammoyee*, 4th Madras Sess., 1862, that learned judge said, "If the property was in the possession of the prosecutor in such a way that he had a right to hold it against the prisoner; that is, that the prisoner could not get it without the consent of the prosecutor, then it would be theft if the prisoner dishonestly possessed himself of it with the intention of appropriating it;" but if the accused could in any legal way get it without the consent of the prosecutor, it would be hard to say that he would commit theft by taking it.

The High Court at Bombay has ruled that a Hindoo woman who removes from the possession of her husband, and without his consent, her palla or stridhun, cannot be convicted of theft, and likewise that any person who joins her in the act cannot be convicted of theft.—*Reg. v. Natha Kalyan*, 8 Bomb. H.C. Rep. C.C. 11. In this case the Court did not go into the question as to whether a Hindoo wife can be convicted of theft in respect of a taking of her husband's property out of his possession, and without his consent, for the purpose of permanently depriving him of the benefit of it, and thereby causing him loss; but in the case of *Reg. v. Khatabai*, 6 Bomb. H.C. Rep. C.C. 9, it was held that a Mohamedan wife might commit theft from her husband of things which were his exclusive property.

When loss is occasioned to a person whose property has been stolen, it is not illegal for the trying magistrate to award a portion of the fine inflicted on the accused as amends to the owner of such property, although the stolen property is recovered and restored to the owner.—*Reg. v. Yesappa bin Ningappa*, 5 Bomb. H.C. Rep. C.C. 41.

*Theft in a Dwelling-house.*

**Sect. 380.** *Theft in a Dwelling-house.*—Whoever commits theft in any building, tent, or vessel, which building, tent, or vessel is used as a human dwelling, or for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Note.**—Sect. 75 provides for increase of punishment for a second offence.

By Act vi. of 1864, Sects. 2 and 3, whipping may be substituted as a punishment for a first or second offence.

*Triable by any magistrate. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.*

### *Charge.*

That you, the said A B, on or about the                      day of                      , at                      , did commit theft in a building used as a human dwelling, to wit, by dishonestly taking a gold watch out of the possession of one C D, without the consent of the said C D, in the dwelling-house of the said C D, and that you, the said A B, have thereby committed an offence punishable under Sect. 380 of the Indian Penal Code, and within, &c.

### *Evidence.*

Prove the theft, and that it was committed in a building, tent, or vessel which is used as a human dwelling, or for the custody of property. An unfinished house will not come within these words, for it is not used as a human dwelling, and *quære* whether it would even come under the words, "used for the custody of property," if the workmen's tools were left in it at night for safety, though it might possibly be held so to do.

The property must be under the protection of the *house*, not the *person*, of the prosecutor at the time they are stolen. As, for instance, where the defendant procured money to be delivered to him for a particular purpose, and then ran away with it—*R. v. Campbell*, 8 Leach, 264; and where the prosecutor, by the trick of ring-dropping, was induced to lay down his money upon a table, and the defendant took it up and carried it away—*R. v. Owen*, 2 Leach, 572; 2 East, P.C. 645: these cases were held not to be stealing in a dwelling-house. But if one, on going to bed, put his clothes and money by the bedside, these are under the protection of the house, and not of the person.—*R. v. Thomas*, Car. Sup. 295. So, where a man went to bed with a prostitute, having put his watch in his hat on a table, and the woman stole the watch while he was asleep; this was held to be a stealing in the dwelling-house, and not from the person.—*R. v. Hamilton*, 8 C. and P. 49. The theft of a cloth, spread out to dry on the top of a house, to which

the prisoner got access by scaling a wall, is not theft in a dwelling-house, but simple theft; and the fact that the roof was used for domestic purposes makes no difference.—Madras H.C., 17th March 1866, 1 Madras Jurist, 282. But a cattle-shed is “a building used for the custody of property.”—Madras H.C., 24th November 1866. It is a question for the court, and not for the jury, whether goods are under the protection of the dwelling-house, or in the personal care of the owner.—*R. v. Thomas, supra*. Where the prisoners were charged with having stolen a sum of money shut up in a box, and placed in the police treasury building, over which they, as *burkandazes*, were placed on guard; it was held that they should have been charged under this section, and not under Sect. 409.—*Reg. v. Juggurnath Singh*, 2 W.R. Crim. 55.

It will be sufficient to prove that the theft was committed either in the dwelling-house, or in some building occupied therewith and connected or communicating therewith, either immediately or by means of a covered and enclosed passage leading from one to the other.

If upon the trial of a person for an offence under this section it be proved that he has in fact committed an offence under Sect. 403 or Sect. 405, he may be found guilty of the offence proved; or, in the High Court, the charge may be amended.—Criminal Procedure Code, Chap. iii.; and Act xviii. of 1862, Sect. 4.

Where the prisoner stole property at night, belonging to two different persons, from the same room of a house, it was held that he could not be convicted and sentenced for two offences.—*Reg. v. Sheikh Moneah*, 11 W.R. Crim. 38. On a conviction under this section, fine cannot be substituted for, though it may be added to, imprisonment.—*Sheikh Dulloo v. Zainah Beebee*, 16 W.R. Crim. 17.

### *Theft by a Servant.*

**Sect. 381.** *Theft by a Servant.*—Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Note.**—Sect. 75 provides for increase of punishment for a second offence.

By Act vi. of 1864, Sects. 2 and 3, whipping may be substituted for above punishment for a first or second offence.

See Sect. 456 of the Criminal Procedure Code.

*Triable by the Court of Session or magistrate of the first or second class. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.*

#### *Charge.*

That you, the said A B, being a clerk (*or servant, or employed in the capacity of clerk or servant*) to one C D, did commit theft in respect of certain property, to wit, six hundred Rupees, in the possession of the said C D, to wit, by dishonestly taking the said property out of the possession of the said C D, without his consent; and that you, the said A B, have thereby committed an offence punishable under Sect. 381 of the Indian Penal Code, and within, &c.

#### *Evidence.*

Prove the theft; and prove that the defendant was clerk or servant to C D, or employed by him in the capacity of a clerk or servant. An apprentice is a servant—*R. v. Mellish*, R. and R. 80; a collector of poor and other rates is a servant—*Reg. v. Callaghan*, 8 C. and P. 154; an assistant overseer is properly described as a servant to the inhabitants of the parish—*Reg. v. Carpenter*, 12 Jur. N.S. 380; a hired boatman is not a servant—*Reg. v. Bawool Manjee*, 8 W.R. Crim. 32. The mode in which the defendant is remunerated for his services is immaterial. Where a defendant, who was employed as a master of a barge, to carry out and sell coals, and was allowed a portion of the profits, after deducting the price of the coals at the colliery, for his labour, took a quantity of coals, sold them, received the price, and absconded with the money, it was held that he was a servant by the majority of the judges.—*R. v. Hartley*, R. and R. 139. The driver of a hackney-coach, hired for the day, is not the servant of the hirer.—*R. v. Haydon*, 7 C. and P. 445. It is not necessary that the employment should be permanent; if it be only occasional, it will be sufficient. Where the prosecutor, having agreed to let the defendant carry out parcels when he had nothing else to do, for which the prosecutor was to pay him what he pleased, gave him an order for two pounds, which he received and appropriated; he was held to be a servant.—*R. v.*

Spencer, R. and R. 299. So, where a drover, who was employed to drive two cows to a purchaser, and receive the purchase-money, appropriated it, he was held to be a servant.—*R. v. Hughes*, 1 Mood. C.C. 370. But where the treasurer of a charitable institution, in his individual capacity, directed the defendant (who was the schoolmaster of the charity school, appointed by a committee, of which the treasurer was a member, and whose duty was confined entirely to the instruction of the children) in one single instance to receive a voluntary contribution, for which he was to have no remuneration; it was held that he was not a clerk, or servant, or a person employed in the capacity of a clerk or servant.—*R. v. Nettleton*, 1 Mood. C.C. 259. The person employed to collect the sacrament money from the communicants is not the servant of the minister, churchwardens, or poor.—*R. v. Burton*, 1 Mood. C.C. 237. The real test of servant or no servant is, whether the defendant be under the control of the prosecutor or not; whether the prosecutor can point out what he is to do with his time, or whether he can do what he likes when he likes. Cockburn, C.J., in the case of *Reg. v. May*, 30 L.J.N.S.M.C. 81, says: "The position of clerk or servant implies control. The great insurance companies have agents, oftentimes resident solicitors, in most towns, who receive commission on the business they introduce—are they clerks, or servants of the companies? Suppose a manufacturer in the West Riding of Yorkshire says to a merchant in London, 'I will allow you a commission on all orders you may get me for shipment of my goods abroad—can you fairly call the merchant the clerk of the manufacturer?'" In a more recent case, *Reg. v. Bowers*, 35 L.J.N.S.M.C. 206, Erle, C.J., in delivering the judgment of the court, says: "A clerk or servant must be under the orders of his master, or employed to receive the moneys of his master, to be within the statute; but, if a man be intrusted to get orders and to receive money, getting the orders when and where he chooses, and getting the money when and where he chooses, he is not a clerk or servant." The defendant, however, is not less the servant of the prosecutor because he is employed by others also.—*R. v. Batty*, 2 Mood. C.C. 257.

If the defendant be intrusted with a note to be changed into coin, gets it so changed, and on his road back appropriates the money to his own use, it is theft as a servant. For, by Sect. 27, *ante*, p. 7, the possession of the clerk on account of his master is

the possession of the master ; consequently, if the clerk appropriate the change to his own purposes, he does virtually take it out of his master's possession.

*Theft after Preparation for Violence.*

**Sect. 382.** *Theft after preparing to use Violence.*—Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

*Illustrations.*

- (a) A commits theft on property in Z's possession ; and, while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.
- (b) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

**Note.**—Sect. 75 provides for increase of punishment for a second offence.

By Act vi. of 1864, Sects. 2 and 3, whipping may be substituted as a punishment for a first or second offence.

*Triable by the Court of Session.* A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.

*Charge.*

That you, the said A B, on or about the                      day of                      , at                      , did commit theft, to wit, by dishonestly taking a gold watch out of the possession of one C D, without the consent of the said C D, having previously to the commission of such theft made

preparation for causing fear of death to the said C D, to wit, by arming yourself with a loaded pistol, in order to the committing of such theft; and that you, the said A B, have thereby committed an offence punishable under Sect. 382 of the Indian Penal Code, and within, &c.

*Extortion.*

**Sect. 383.** *Extortion.*—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security, or anything signed or sealed, which may be converted into a valuable security, commits “extortion.”

*Illustrations.*

- (a) A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.
- (b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain moneys to A. Z signs and delivers the note. A has committed extortion.
- (c) A threatens to send clubmen to plough up Z's field, unless Z will sign and deliver to B a bond binding Z under penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.
- (d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper, and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

**Note.**—In the case of *Meer Abbas Ali v. Omed Ali* (18 W.R. Crim. 17), it was held that the obtaining of money from a person against his will, under a threat, on refusal, to make use of real or supposed influence to deprive him of an appointment, constitutes extortion under this section.

**Sect. 384.** *Punishment for Extortion.*—Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.



**Sect. 385.** *Threat of Injury in order to Extort.*—Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 386.** *Extorting by fear of Death.*—Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person, or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 387.** *Putting in fear of Death, in order to Extort.*—Whoever, in order to the committing of extortion, puts, or attempts to put, any person in fear of death, or of grievous hurt to that person, or to any other, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

**Sect. 388.** *Extortion by threat of Accusation of an Offence.*—Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed, or attempted to commit, any offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the offence be one punishable under Sect. 377, may be punished with transportation for life.

**Sect. 389.** *Putting person in fear of Accusation in order to extort.*—Whoever, in order to the committing of extortion, puts, or attempts to put, any person in fear of an accusation against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the offence be punishable under Sect. 377, may be punished with transportation for life.

**Note.**—Sect. 75 provides for increase of punishment for a second offence.

By Act vi. of 1864, 'Sects. 1 and 3, whipping may be substituted as a punishment for a first or second offence under Sects. 388 and 389.

Sect. 40 defines the meaning of the word "offence."

*Offences under Sects. 384 and 385 are triable by the Court of Session, or magistrate of the first or second class; those under Sects. 386-389, by the Court of Session. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable under Sects. 384 and 385, but not under Sects. 386-389.*

### *Charge.*

That you, the said A B, on or about the                      day of                      , at                      , did commit extortion by putting one C D in fear of accusation against him, the said C D, of having committed an offence punishable with death, to wit, the offence of murder (or an offence punishable under Sect. 377 of the Indian Penal Code, to wit, an unnatural offence), and thereby dishonestly inducing the said C D to deliver to you, the said A B, five hundred Rupees, and that you have thereby committed an offence punishable under Sect. 389 of the Indian Penal Code, and within, &c.

### *Evidence.*

Extortion is the obtaining money by means of a threat, which is either made by the defendant, not directly in the presence of the prosecutor, or else one which is not to be put in execution forthwith. If the prisoner make a threat of death, hurt, or wrongful restraint, which is to be put in execution forthwith in the presence of the prosecutor, the offence is that of robbery; *post*, p. 334. Threats of bodily injury would, to constitute this offence, generally be made by letter; those of accusations, either by word of mouth or by letter. The mere going about collecting money, upon an assertion that an order had been made to tax the persons upon whom the demand was made, is not extortion, but cheating.—5 R.J. and P. 147.

If the threat be by letter, then it is for the jury to determine whether the letter amounts to a threat to accuse the prosecutor of the offence mentioned.—*R. v. Girdwood*, 2 East, P.C. 1121. If it does not appear from the letter itself of what offence the defendant

threatened to accuse the prosecutor, the defendant's declaration of the meaning of the letter may be given in evidence to explain it.—*R. v. Tucker*, 1 Mood. C.C. 134. Both the threat and the intent may be inferred, even against the declaration of the prisoner at the time, and in the absence of express proof from the letter itself, from the prisoner's previous and contemporaneous, and even from his subsequent conduct and expressions to third parties.—*Reg. v. Menage*, 3 F. and F. 310. A prisoner was convicted upon an indictment for threatening a boy's father to accuse the boy of an abominable crime upon a mare, with intent to extort money. It was proved that before giving information against the boy, the prisoner stated to the father that the offence had been committed, and unless the father bought the mare of him at a certain price, he would accuse the boy. The conviction was upheld.—*Reg. v. Redman*, 11 Jur. N.S. 960. The threat must be to accuse, not to bring witness to support a charge already made.—*R. v. Gill*, 1 Arch, P.A. 302. But it need not be to accuse before a judicial tribunal; a threat to charge before a third person is sufficient.—*R. v. Robinson*, 2 M. and Rob. 14. And it is immaterial whether the prosecutor be innocent or guilty of the offence which is imputed to him.—*R. v. Gardner*, 1 C. and P. 479; *Reg. v. Cracknell and Walker*, 10 Cox's Crim. Cases, 408; and see also 3 R.C.C. Cr. 19.

A letter written to a banker, stating that it was intended by a cracksman to burn his books, and cause his bank to stop, and that, if £250 were put in a certain place, the writer of the letter would prevent the mischief, but if the money were not put there, it would happen,—was held to be a letter demanding money, with menaces.—*Reg. v. Smith*, 1 Den. C.C. 510.

The threats or menaces need not be made directly to the prosecutor; it is sufficient if they are caused to come to his knowledge through a third party.—*R. v. Paddle*, R. and R. 484. Proof that the defendant dropped a letter in a place where he knew the prosecutor would come, and that it was picked up by another person, and by him delivered to the prosecutor—*R. v. Lloyd*, 2 East, P.C. 1123; *R. v. Wagstaff*, R. and R. 398; or that the letter is in the handwriting of the defendant, and that it came to the prosecutor by post—*R. v. Heming*, 2 East, P.C. 1116; has been held sufficient proof of a sending by the defendant. The leaving of a letter, directed to A, near A's house, with an intention that it should not

only reach A, but B also, was held to be a sending of it to B, by whom it was afterwards seen.—Reg. v. Grimwade, 1 Den. C.C. 30.

Where, by arrangement among several persons, the threat is used by some, and the property obtained by that threat is received by the others, all are equally guilty of extortion.—Reg. v. Shankar, Bhagvat, and another, 2 Bombay H.C. 417.

Delivery of the property by the person put in fear is essential to the offence of extortion. Therefore, if no such delivery takes place, but the person intimidated passively allows the offenders to take away the property, this would not be extortion, but robbery, if the threat came under the terms of Sect. 390, *post*, p. 334.—1 R.C.C. Cr. 20.

Abdul Kadar was a man who purchased from the Government the privilege of carrying away any firewood he might find lying in the jungles of the Sanjan and Mahim *talukas* during certain months of the hot season. He had no proprietary right in the wood until after he had collected it, and was not to set up *nakas* and take fees, or to sublet the contract, but there was in his contract no reservation of the rights of the villagers, although they had been formerly in the habit of collecting the wood for their own use. He was charged with having extorted money from the complainants under threats of detaining certain cartloads of firewood they had collected in the jungle and were taking home. It was held that, as the prisoner might have believed in good faith that he had such a right as he had put forward, even though he was wrong in his construction of the contract, he could not be said *dishonestly* to have induced the delivery of the property.—Reg. v. Abdul Kadar Valad Bala Abuji, 3 Bombay H.C. Rep. C.C. 45.

Where a complainant charged a person who was one of the public servants mentioned in Sect. 167 of the old Criminal Procedure Code (Sect. 466 of that now in force) with committing acts which, if committed by a private individual, would have constituted the offence of extortion, it was held that it was not illegal for the judge to treat the case as one of extortion, and to proceed with the trial without any sanction for the prosecution, although it would have been more judicious to have treated it as an offence under Sect. 161 of the Penal Code, and have obtained the necessary sanction for the prosecution.—Reg. v. Parshram Keshav, 7 Bomb. H.C. Rep. C.C. 61.

*Robbery.*

**Sect. 390. *Robbery.***—In all robbery there is either theft or extortion.

*When Theft is Robbery.*—Theft is “robbery,” if, in order to the committing of the theft, or in committing the theft, or in carrying away, or attempting to carry away, property obtained by the theft, the offender, for that end, voluntarily causes, or attempts to cause, to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

*When Extortion is Robbery.*—Extortion is “robbery,” if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint, to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

*Explanation.*—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

*Illustrations.*

- (a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.
- (b) A meets Z on the highroad, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.
- (c) A meets Z and Z's child on the highroad. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.
- (d) A obtains property from Z by saying: “Your child is in the

hands of my gang, and will be put to death unless you send us ten thousand Rupees." This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

**Note.**—For Sect. 391, see p. 338.

**Sect. 392. *Punishment for Robbery.***—Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if the robbery be committed on the highway, between sunset and sunrise, the imprisonment may be extended to fourteen years.

**Sect. 393. *Attempt to commit Robbery.***—Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

**Sect. 394. *Causing Hurt in committing Robbery.***—If any person, in committing, or attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing, or attempting to commit such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**Note.**—For Sects. 395-400, see pp. 338, 339.

**Sect. 401. *Belonging to a Gang of Thieves.***—Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

For Sect. 402, see p. 339.

**Note.**—Sect. 75 provides for increased punishment for a second offence.

**Act vi. of 1864, Sect. 4.**—For a second offence of robbery, as defined in Sect. 390, attempt to commit robbery, Sect. 393, or voluntarily causing hurt in committing robbery, Sect. 394, whipping may be added as a punishment.

*Offences under Sects. 392, 393, and 394 are triable by the Court of Session or magistrate of the first or second class; those under Sect. 401, by the Court of Session. A warrant should issue in the first*

*instance. Police officers may arrest without a warrant. Defendants are not bailable.*

*Charge.*

That you, on or about the                    day of                    , at                    , did (or did attempt to) commit robbery ; and that you have thereby committed an offence punishable under Sect. 392 (or 393) of the Indian Penal Code, and within, &c.

*Evidence.*

The definition of robbery in Sect. 392 is rather wider than that of the English law, inasmuch as it includes violence or fear of violence after the robbery has been completed. The prosecutor must either prove that he was actually in bodily fear, or he must prove circumstances from which the court and jury may presume such a degree of apprehension of danger as would induce him to part with his property—Fost. 128 ; and in this latter case, if the circumstances thus proved be such as are calculated to create such a fear, the court will not pursue the inquiry further, and examine whether the fear actually existed. Therefore, if a man knocks another down, and steals from him his property whilst he is insensible on the ground, this is robbery.—Fost. 128. It is not necessary that the injury and fear of injury should be in respect of the person robbed, for the Code says “to any person ;” therefore, if a man take another’s child, and threaten to destroy him unless the other give him money, this is robbery, if it be done in the actual presence of the prosecutor.—R. v. Reave, 2 East, P.C. 735. The use of violence, however, will not convert theft into robbery, unless the violence is committed for one of the ends specified in Sect. 390 ; therefore, when a thief, finding himself observed, abandoned his booty, and ran away, throwing stones at the owner to prevent pursuit, the Madras High Court ruled that the offence was not robbery.—Rulings of Madras H.C. 1865, on Sect. 390. On a trial for robbery, it is competent for the jury to disbelieve the evidence as to the assault, and bring in a verdict of theft.—Reg. v. Sakhabib Sheikh, 2 W.R. Crim. 13.

Upon an indictment for robbery, it appeared that a mob came to the house of the prosecutor, and with the mob the prisoners, who advised the prosecutor to give them something to get rid of them,

and prevent mischief, by which means they obtained money from the prosecutor; and Parke, J. (after consulting Vaughan, B., and Alderson, J.), admitted evidence of the acts of the mob at other places before and after on the same day, to show that the advice of the prisoners was not *bonâ fide*, but in reality a mere mode of robbing the prosecutor.—*R. v. Winkworth*, 4 C. and P. 444.

Where it appeared that the defendant attempted to commit a rape upon the prosecutrix, and she gave him money to desist, which he put in his pocket, and then continued his attempt until he was interrupted; this was holden by the judges to be robbery.—*R. v. Blackham*, 2 East, P.C. 711. Where the defendant took goods from the prosecutrix of the value of eight shillings, and by force and threats compelled her to take one shilling, under pretence of payment for them; this was holden to be robbery.—*R. v. Simons*, 2 East, P.C. 712. Dishonest intention is a main ingredient in the offence of robbery; therefore, a conviction for robbery with a finding that the property was not taken with any dishonest intention is bad.—*Madras H.C. Ruling*, 28th October 1870; 5 *Madras H.C. Rep.* App. 39.

If in the commission of robbery or dacoity any of those taking part in the commission of the offence are armed, those only who are so armed will be responsible for the use of the weapon, Sects. 397, 398, p. 338—and those only who cause any grievous hurt, or attempt to cause death, will be responsible for such violence, Sect. 397—unless death be actually caused, and then each one in the company will be guilty of murder if the offence be dacoity, Sect. 396; but there is no provision for the case of murder committed by one of a party of robbers less than five in number. In this case, however, those present, but not actually striking a blow, may be charged as abettors, and receive the same punishment as the principal. If hurt only, and not grievous hurt, be caused in robbery, then not only the person causing the hurt, but all assisting in the robbery will be responsible for the hurt, Sect. 394, p. 335.

The proof of belonging to a wandering gang of thieves, not being dacoits, will be the same in nature as that in respect of being a thug; *ante*, p. 274. In order to convict of this offence it is necessary that, on a trial by jury, the judge should, in his summing up, put clearly to the jury the necessity of proof of association between the accused and others, and that this association was for the pur-



pose of habitual theft, and that habit must be proved by an aggregate of facts.—*Reg. v. Shirram Venkatasami*, 6 Madras H.C. Rep. 120.

These offences may be inquired into by any magistrate competent so to do in any District in which the offender *is*, and the accused may be committed to the Court of Session to which such magistrate is subordinate. Criminal Procedure Code, chap. ii.

### *Dacoity.*

**Sect. 391. *Dacoity.***—When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amounts to five or more, every person so committing, attempting, or aiding, is said to commit “dacoity.”

For Sects. 392-394, see p. 335.

**Sect. 395. *Punishment.***—Whoever commits dacoity shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 396. *Dacoity with Murder.***—If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 397. *Robbery or Dacoity, with use of Weapon.***—If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

**Sect. 398. *Attempting to commit Robbery, &c., armed.***—If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

**Sect. 399. *Preparing to commit Dacoity.***—Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 400.** *Belonging to a Gang of Dacoits.*—Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**Note.**—For Sect. 401, see p. 335.

**Sect. 402.** *Assembling to commit Dacoity.*—Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

**Note.**—Sect. 75 provides for increased punishment for a second offence.

By Act vi. of 1864, Sect. 4, whipping may be inflicted as a punishment in addition to any other for a second offence of dacoity as defined by Sect. 391.

*Triable by the Court of Session. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.*

#### *Charge.*

That you (with others to the number of five or more), on or about the            day of            , at            , committed robbery and thereby dacoity; and that you have thereby committed an offence punishable under Sect. 395 of the Indian Penal Code, and within, &c.

#### *Evidence.*

The proofs will be the same as in the case of robbery, *ante*, p. 336, with the exception that it must be proved that five persons at least were concerned in the act. All the remarks at p. 337 are applicable to this group of offences. A conviction under Sect. 397 is equally good, whether the number of thieves be five or under, as it applies equally to robbery and dacoity.—Reg. v. Dwarka Aheer, 2 W.R. Crim. 49.

The words “with others to the number of five or more,” are said by the High Court in Bengal to be redundant, as being included in the term “dacoity”—2 W.R.C.L. 1; but the Madras High Court has ruled that they should be inserted, as being necessary to inform

the prisoner of the charge against him.—Madras Rulings, 1864, on Sect. 395.

A prisoner convicted of dacoity under Sect. 395, cannot be convicted also of dishonestly receiving stolen property under Sect. 411, or property transferred by dacoity under Sect. 412, in respect of property obtained by the dacoity of which he has been convicted.—Reg. v. Shahabib Sheikh, 13 W.R. Crim. 42.

These offences may be inquired into by any magistrate competent so to do, in any District in which the offender is, and the accused may be committed to the Court of Session to which such magistrate is subordinate. Criminal Procedure Code, Chap. ii.

*Criminal Misappropriation of Property.*

**Sect. 403. Dishonest Misappropriation of Property.**—Whoever dishonestly misappropriates or converts to his own use any moveable property shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Illustrations.*

- (a) A takes property belonging to Z out of Z's possession, in good faith believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.
- (b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.
- (c) A and B, being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But if A sells the horse, and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

*Explanation 1.*—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

*Illustration.*

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

*Explanation 2.*—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows, or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means, or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

*Illustrations.*

- (a) A finds a Rupee on the high road, not knowing to whom the Rupee belongs. A picks up the Rupee. Here A has not committed the offence defined in this section.
- (b) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.
- (c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in

whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

- (d) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.
- (e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.
- (f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

**Sect. 404. Dishonest Misappropriation of Property belonging to a Deceased Person.**—Whoever dishonestly misappropriates, or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offender at the time of such person's decease was employed by him as a clerk, or servant, the imprisonment may extend to seven years.

*Illustration.*

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

**Note.**—Sect. 75 provides for increased punishment for a second offence.

*Offences under Sect. 403 are triable by any magistrate; those under Sect. 404, by the Court of Session or a magistrate of the first or second class. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

*Charge.*

That you, the said A B, on or about the                      day of                      , at                      , dishonestly did misappropriate (*or convert to your own use*) certain moveable property belonging to C D (deceased), to wit, a silver tankard (late in the possession of the said C D, deceased, you, the said A B, knowing that the said property was in the possession of the said C D, at his decease, and had not been since then in the possession of any person legally entitled to such possession), and that you, the said A B, have thereby committed an offence punishable under Sect. 403 (404) of the Indian Penal Code, and within, &c.

*Evidence.*

The distinction between the two terms used in the above sections seems to be this: the defendant appropriates the property as soon as he makes up his mind to keep it for himself, or to hand it over to some one other than the rightful owner; he converts it when he takes it into his own possession, or disposes of it for other property. It has been held that a person may commit the offence of dishonest misappropriation of money although he does not bring the money to his own use.—*Reg. v. Enayet Hossein*, 11 W.R. Crim. 1; and *Reg. v. Nobin Chunder Sircar*, 12 W.R. Crim. 39.

Two notes were stolen from A, which B (not a *bond fide* holder for valuable consideration) tendered to C in payment for certain articles. C, not knowing B, refused to deal with him, whereupon B brought D, who was known to C, and the purchase was made by D, and paid for by him with the notes. It was held that the part which D performed in the transaction amounted to a conversion of the notes to his own use.—*Kissorymohun Roy v. Rajnarain Sen*, 1 Bengal H.C. Rep. 263. A servant was ordered to collect some money; he collected it, and gave a receipt of his own for the amount. The receipt given to him by his master he returned, saying that he had failed in collecting this particular debt. When charged with criminal misappropriation, he alleged that his master owed him as much as he had collected, and he had therefore taken his master's money in discharge of the debt due to himself; but it was held that he was guilty of criminal misappropriation.—*Reg. v. Bissessur Roy*, 11 W.R. Crim. 51. Where an accused is interested in property jointly with others, he is not necessarily guilty of a

criminal act if he takes possession and disposes of it.—Reg. v. Parbutty Churn Chuckerbutty, 14 W.R. Crim. 13.

The mere keeping of a thing found without attempting to find the owner, but without any attempt on the part of the finder to appropriate or convert the same to his own use, is not punishable under Sect. 403.—Reg. v. Abdool, 10 W.R. Crim. 23. A prisoner who received a certain quantity of hides on his agreeing, but failing, to pay a certain sum for them, is not guilty of dishonest misappropriation.—Reg. v. Borptum Moochee, 17 W.R. Crim. 11.

Under Sect. 404, the same elements are required to constitute an offence as would be required to constitute the offence of criminal misappropriation in respect of a person who was alive.—Reg. v. Nobin Chunder Sircar, 12 W.R. Crim. 39. The word property does not refer to immoveable, but only to moveable, property.—Reg. v. Girdhar Karsondas, 6 Bomb. H.C. Rep. C.C. 33; and the charge should specify the name of the person to whom the property belonged.—Reg. v. Parbutty Churn Chuckerbutty, 14 W.R. Crim. 13.

The offence of criminal misappropriation differs from theft, in the fact that the property misappropriated comes into the defendant's hands honestly; and from criminal breach of trust, in that his possession is by some casualty which does not raise any legal duty, but only the moral one of returning everything to its proper owner. In the case of misappropriation of the property of a deceased person, the property is for a time without an owner. If, however, the executor has taken possession, the offence will be that of theft.

### *Criminal Breach of Trust.*

**Sect. 405. Criminal Breach of Trust.**—Whoever, being in any manner intrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses, or disposes of that property, in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

### *Illustrations.*

- (a) A, being executor to the will of a deceased person, dishonestly disobeys the law, which directs him to divide the

- effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.
- (b) A is a warehouse keeper. Z, going on a journey, intrusts his furniture to A, under a contract that it shall be returned, on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.
  - (c) A, residing at Calcutta, is agent for Z residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lac of Rupees to A, with directions to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.
  - (d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.
  - (e) A, a revenue officer, is intrusted with public money, and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.
  - (f) A, a carrier, is intrusted by Z with property, to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

**Sect. 406.** *Punishment for Criminal Breach of Trust.*—Whoever commits criminal breach of trust, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Sect. 407.** *Criminal Breach of Trust by Carrier, &c.*—Whoever, being intrusted with property as a carrier, wharfinger, or ware-



house-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Sect. 408.** *Criminal Breach of Trust by a Clerk or Servant.*—Whoever, being a clerk or servant, or employed as a clerk or servant, and being in any manner intrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Sect. 409.** *Criminal Breach of Trust by a Public Servant, or by a Banker, Merchant, or Agent.*—Whoever, being in any manner intrusted with property, or with any dominion over property, in his capacity of a public servant, or in the way of his business as a banker, merchant, factor, broker, attorney, or agent, commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Note.**—Sect. 75 provides for increased punishment for a second offence.

See Sect. 456 of the Criminal Procedure Code.

*Offences under Sects. 406 and 408 are triable by the Court of Session or magistrate of the first or second class; those under Sects. 407 and 409, by the Court of Session or magistrate of the first class. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are not bailable.*

#### *Charge.*

That you, on or about the            day of            , at            , (being intrusted with certain property, to wit, five chests of opium, as a wharfinger), did commit criminal breach of trust (in respect of such property); and that you have thereby committed an offence punishable under Sect. 406 (407) of the Indian Penal Code, and within, &c.

#### *Evidence.*

The defendant must be shown to have received the property in respect of which he is alleged to have committed criminal breach of

trust, under such circumstances as indicate that he was bound to apply it in a certain way. This may arise from express direction of law, by legal implication, from express or implied contract, or from the command of a master to a servant. It must also be shown by the prosecution that the defendant disposed of the property in some way other than that in which he was bound to apply it; and in so disposing of it in breach of the trust, did so dishonestly.—6 Madras H.C. Rep. App. 28; *Isser Chunder Ghose v. Peari Mohun Palit*, 16 W.R. Crim. 39. If the defendant is charged as holding a particular office under Sects. 407, 408, or 409, it must be proved, not only that he received the property, but that he received it in the capacity in which he is charged. Sect. 409 does not limit the way in which a trust shall arise, whether by specific order, or by reason of its being a part of the proper duty of a public functionary. Where, therefore, it was proved that the head clerk of an office intrusted the management of stamps, with the knowledge and sanction of his superiors, to one of his assistants, the latter was held to have been guilty of criminal breach of trust, as a public servant, when he made away with the stamps.—*Reg. v. Ram Dhun Dey*, 13 W.R. Crim. 77. But where a court inspector improperly delegated to a constable the custody of Government moneys (taking from him private security to save himself from loss in case of defalcation), and the constable dishonestly converted the money to his own use, although he afterwards restored it, it was held that the constable was not a public servant, and therefore the offence was under 408 and not 409.—*Reg. v. Banee Madhub Ghose*, 8 W.R. Crim. 1.

The misappropriation, or conversion to the defendant's use, will be proved in various ways. If the defendant is a clerk or servant, and it is his duty to account for moneys received at stated times, or from time to time as he receives them, his not doing so wilfully will be evidence of misappropriation—*Reg. v. Jackson*, 1 C. and K. 384; and even where no precise time can be fixed at which it was his duty to pay them over, his not accounting for them, if found as a fact to have been done dishonestly, is equally a misappropriation—*Reg. v. Welch*, 1 Den. C.C. 199. Where the defendant received payment of a debt from one of his master's customers in Bank of England notes, but accounted with his master for £6 less than he received, and afterwards delivered these very Bank of England notes

to his master upon another account, it was ruled by Bayley, J., that these notes, to the amount of £6, must be deemed to have been embezzled (misappropriated) the moment the defendant accounted for £6 less than he received, and that his afterwards paying these identical notes to his master on another account made no difference; and this ruling was afterwards upheld by the judges.—*R. v. Hall*, 3 Stark, 67; *R. and R.* 463. A servant who receives money for a specific purpose, and does not use it for that purpose, but, on being called on to account for the money, falsely says that he employed it for the purpose for which it was given, is guilty of an offence under Sect. 408.—*Watson v. Kholabkhan*, 10 W.R. Crim. 28. A village *shroff*, whose duty it was to assist in collecting the public revenue, received grain from the ryots, and gave receipts as for money received, by virtue of a private arrangement between him and the villagers. It was held that he could not be convicted of criminal breach of trust as a public servant under Sect. 409, as he had no authority to receive the public revenue in kind, and the party who delivered the grain did not thereby discharge himself from liability for the revenue.—4 Madras H.C. Rep. App. 32.

A partner intrusted with, or having dominion over, partnership property, and dishonestly misappropriating or converting to his own use such property, is guilty of criminal misappropriation under Sect. 405.—*Nrigendro Lall Chatterjee v. Okhoy Coomar Shaw*, 21 W.R. Crim. 59. (But see *in re Lall Chand Roy*, 9 W.R. Crim. 37.) And a married woman may be convicted under the first clause of the same section if she dishonestly misappropriates or converts to her own use property with which she has been intrusted.—*Reg. v. Robson*, 31 L.J.N.S.M.C. 22. But she cannot commit a criminal breach of trust in respect of her husband's property.—Rulings of Madras H.C. of 1864 on Sect. 406. It would be well, however, that the decisions reported in the portion referring to theft with respect to the relation of husband and wife among Hindoos and Mohamedans should be considered in connection with this decision.

The prisoner, a pledgee of a turban, without permission or authority, wore it; and it was held that the deterioration of the article by use was not such a loss of property to the owner, and the wrongful beneficial use of the property to the prisoner was not such a gain to him, as to make his act a criminal breach of trust.—Madras

H.C. Rulings, 18th September 1866. A person who pledges what is pledged to him *may* be guilty of criminal breach of trust. There are two elements which must, however, be made out—(1) The disposal in violation of some direction of law or contract, express or implied, prescribing the mode in which this trust ought to be discharged; (2) That such disposal was made dishonestly; but great caution ought to be observed in drawing the inference of dishonesty from a breach of a duty imposed by civil law. Where the rule of law is perfectly plain, a conviction ought by no means necessarily to follow; but the very violation of the law would be some evidence of the dishonest intent.—6 Madras H.C. Rep. App. 28.

At common law a conversion might arise, either by a wrongful taking of a chattel, or by some other illegal assumption of ownership, or by illegally using or misusing it, or by wrongful detention; but the wording of the sections of the Code which apply to this subject show that an actual and substantial rather than a technical conversion is intended, and proof of such a conversion should be adduced at the trial if that be relied upon as evidence of the defendant's guilt. Conversion, however, involves previous appropriation, in respect to which see *ante*, p. 340, &c.

If the defendant has appropriated or converted the property to his own use under a claim of right, he will be entitled to an acquittal, unless the claim is so shadowy and unsubstantial as to be brought forward without any *bona fides*. Where an alleged mortgagee denied the mortgage, it was held that he could not be convicted of criminal breach of trust in respect of the title-deeds.—*Reg. v. Jaffir Naik*, 2 Bombay H.C. Rep. 133.

The misappropriation of each separate item of money with which a person is intrusted is a separate offence, and the facts connected with it should form the subject of a separate inquiry. In such a case the duty of the committing magistrate is to select certain distinct items and frame his charge upon them, and to adduce evidence specifically on those issues.—*In re Chetter*, 15 W.R. Crim. 5.

### *Receiving Stolen Property.*

**Sect. 410. Stolen Property.**—Property, the possession of which has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated, or in respect

of which the offence of criminal breach of trust has been committed, is designated as "stolen property." But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

**Sect. 411. *Receiving Stolen Property.***—Whoever dishonestly receives or retains any stolen property, knowing, or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Sect. 412. *Receiving Property acquired by Dacoity.***—Whoever dishonestly receives or retains any stolen property, the possession whereof he knows, or has reason to believe, to have been transferred by the commission of dacoity, or dishonestly receives from a person whom he knows, or has reason to believe, to belong, or to have belonged, to a gang of dacoits, property which he knows, or has reason to believe, to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 413. *Habitually dealing in Stolen Property.***—Whoever habitually receives or deals in property which he knows, or has reason to believe, to be stolen property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 414. *Concealing Stolen Property.***—Whoever voluntarily assists in concealing, or disposing of, or making away with, property which he knows, or has reason to believe, to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Note.**—Sect. 75 provides for increased punishment for a second offence.

By Act vi. of 1864, Sects. 2 and 3, whipping may be substituted as a punishment for a first offence, and either substituted or added for a second offence under Sects. 411 and 412; by Sect. 4, whipping may be added as a punishment for a second offence under Sect. 413.

*Offences under Sects. 412 and 413 are triable by the Court of Session; those under Sects. 411 and 414 by the Court of Session, or a magistrate of the first or second class. A warrant should issue in*

*the first instance. Police officers may arrest without a warrant. Defendants are not bailable.*

### *Charge.*

That you, on or about the            day of            , at            , dishonestly did receive (*or* retain) stolen property, to wit, three gold watches and two gold chains, knowing (*or* having reason to believe) the same to be stolen property (*or* that the possession of the same had been transferred by the commission of dacoity); and that you have thereby committed an offence punishable under Sect. 411 (412) of the Indian Penal Code, and within, &c.

### *Evidence.*

A theft of the property alleged to have been received must be first proved, for which purpose the principal offender is a competent witness, as indeed to prove the whole case.—*R. v. Haslam*, 1 Leach, 418. But a plea of guilty by the thief is no evidence of the theft as against the receiver; therefore, if two persons are jointly charged with theft and receiving, and the thief pleads guilty, and the receiver demands a trial, the fact of the theft must be proved by evidence. It is competent to the defendant to disprove the guilt of the principal.—*Fost.* 365. The property charged as having been received should be laid as the property of the owner.—*Reg. v. Siddoo bin Balnath*, 1 Bombay H.C. Rep. 95.

The theft having been proved, the next step is to prove the receipt by the defendant. Although there be proof of a criminal intent to receive, and a knowledge that the goods were stolen, if the *exclusive* possession still remain in the thief, a conviction for receiving cannot be sustained.—*Reg. v. Wiley*, 2 Den. C.C. 37. But a person having a *joint* possession with the thief may be convicted as a receiver.—*Reg. v. Smith, Dears.* C.C. 494. Two prisoners were jointly charged with receiving stolen goods, knowing them to have been stolen, and were convicted upon evidence which showed that one had received the goods from the thief, and afterwards disposed of them to the other, both having a guilty knowledge; it was held that the conviction was right.—*Reg. v. Rearden and Bloor*, 12 Jur. N.S. 476. Where A, knowing that goods had been stolen, directed B, his servant, to receive them into his premises, and B, also knowing that they were stolen, in pursuance of

that direction, afterwards received them in A's absence, they were held to be indictable jointly.—Reg. v. Parr, 2 M. and Rob. 346. The actual manual possession or touch of the goods by the defendant is not necessary to the completion of the receiving; it is sufficient if they are in the actual possession of a person over whom the defendant has a control, so that they would be forthcoming if he ordered it.—Reg. v. Smith, 24 L.J.N.S.M.C. 135. Stolen property was brought by the thief into A's shop; A, with guilty knowledge, called her servant and directed her to take the stolen goods to the pawn office, and "pawn them for the girl" (the thief). A's servant did so accordingly, and brought back the money, which she handed to the thief in her mistress's presence. A never had manual possession either of the goods or the money; it was held that this amounted to a receiving by A of the stolen property.—Reg. v. Miller, 6 Cox, Crim. Cases, 353. But the defendant must have exercised some dominion over the stolen property to convict him of receiving, it is not sufficient that he should have been caught in the act of bargaining. Two men stole some fowls, which they put into a bag, and carried to the house of the father of one Wiley, for the purpose of selling to Wiley. All three went together from the house to a stable, the bag being carried on the back of one of the thieves; and when the policeman went in, the sack was found lying on the floor, unopened, and the three men around it as if they were bargaining, but no sounds were heard. In this case, Martin, B., said, "I am of opinion that Wiley, under those circumstances, never did receive those fowls. The two men had the stolen articles in their possession as vendors adversely to Wiley; and they never intended to part with that possession, unless some bargain was concluded for the purchase of them. Upon this ground, I am of opinion that Wiley did not 'receive' the goods in the ordinary and proper sense of the word." Talfourd, J., also said, "The position of Wiley, as a person negotiating for the purchase, excludes the idea of his having any possession. There was still a *locus penitentiae*; he might still have determined not to take the fowls; and the whole matter was inchoate and incomplete."—Reg. v. Wiley, 4 Cox, Crim. Cases, 412. In another case where some stolen wool was put by the thief into the defendant's scales, but the latter had not weighed or bargained for it; it was held to be no receiving. The finding of stolen property in the possession

of a person, who can give no reasonable account of the manner in which he became possessed of it, immediately after the commission of a theft or dacoity, leads to one of two inferences ; either that he received it from the thieves or dacoits, or that he was himself engaged in the theft or dacoity, and is a sufficient corroboration of an approver.—13 W.R. Cr. L. 2 ; see also *Reg. v. Shurruffooddeen*, 13 W.R. Crim. 26.

A wife cannot receive from her husband, but a husband may receive from his wife. A husband and wife were indicted jointly for receiving. The jury found both guilty, and found also that the wife received the goods without the control or knowledge of the husband, and apart from him, and that “he afterwards adopted his wife’s receipt.” It was held that this finding did not warrant the conviction of the husband—*Reg. v. Dring*, 1 Dears. and B. 329 ; but the wife, under the Penal Code, might have been found guilty of receiving, and the husband of retaining, stolen goods. Stolen goods were delivered by a thief to the wife of the prisoner in his absence ; she paid sixpence on account, but the amount to be paid was not then fixed. The prisoner and the thief afterwards met, when the prisoner, with the knowledge that the goods had been stolen, agreed upon the price, and paid the balance. It was held that the prisoner was properly convicted of receiving the goods, knowing them to have been stolen.—*Reg. v. Woodward*, 31 L.J.N. S.M.C. 91. A husband and wife were jointly indicted for stealing and receiving. The jury found the wife guilty of stealing, and that she acted voluntarily, and without any constraint on the part of her husband ; they also found the husband guilty of receiving the property from his wife, knowing it to be stolen. It was held that he was rightly convicted of receiving.—*Reg. v. McAthys*, 31 L.J.N.S.M.C. 35.

The latter clause of Sect. 410 seems to be a legislative enactment of the principle laid down in the case of *Reg. v. Dolan*, 6 Cox, Crim. Cases, 449, where stolen goods were found in the pocket of the thief by the owner, who sent for a policeman ; the three then went towards the prisoner’s shop, where the thief had previously sold other stolen goods, and, when near the shop, the goods were given again to the thief, who was sent by the owner into the shop to sell them, which he accordingly did to the prisoner, and then returned with the proceeds to the owner ; and the Court of Crimi-



nal Appeal held that the prisoner was not guilty of receiving stolen goods. This case was also acted upon in that of *Reg. v. Schmidt*, 35 L.J.N.S.M.C. 94.

The last fact to be proved is, that the defendant knew the things were stolen, and it must be *clearly* proved that he received or retained the things with a guilty knowledge.—*Reg. v. Meer Yar Ali*, 13 W.R. Crim. 70. This is proved, either directly, by the evidence of the principal offender, or circumstantially, by proving that the defendant bought them much under their value, 1 Hale, 619, or denied their being in his possession, or the like. To show a guilty knowledge, other instances of receiving the goods of the same prosecutor, from the same person, may, it seems, be given in evidence—*R. v. Dunn*, 1 Mood. C.C. 146; even though they be the subject of other charges, and antecedent to the receiving in question—*R. v. Davis*, 6 C. and P. 177. So, evidence that on various former occasions portions of the commodity stolen had been missed by the prosecutor, and that the defendants, the alleged thief and receiver, had after such occasions been found selling such a commodity, the portion which was sold on the last of these occasions being identified as part of that missed by the prosecutor, was held admissible in proof of the guilty knowledge.—*Reg. v. Nicholls*, 1 F. and F. 51. But evidence of the possession by the prisoner of other goods stolen at other times from other persons is not admissible.—*Reg. v. Oddy*, 2 Den. C.C. 264. The offence of dishonest retention of stolen property under Sect. 411, may be complete without any guilty knowledge at the time of reception—*Madras High Court Ruling*, 4 Madras H.C. Rep. App. 42; provided that it can be proved that, before the charge was laid, the accused became acquainted with the fact that the goods were stolen; but even then it is presumed that the mere retention, after such knowledge, would not amount to an offence, unless it was *for the purpose* of “causing wrongful gain to one person, or wrongful loss to another.”—I.P.C. Sect. 24, *ante*, p. 25.

Knowledge that the goods had been obtained by dacoity, or that the seller belonged to a gang of dacoits, may be shown by the fact, that the defendant was in the habit of meeting various members of the gang of whom the seller was one separately, or had attended their meetings, or from other facts which would lead to the inference that he must have known how the goods were obtained. But

where stolen property is found in the possession of dacoits, the offence of knowingly having in their possession goods obtained by means of dacoity, is to be considered as included in the original one of dacoity, unless there are circumstances which clearly separate the one crime from the other, such as length of time, or distance, for example.—1 W.R. Cr. C. 48.

When prisoners are charged with the offence of assisting in concealing or disposing of property which they know, or have reason to believe to have been stolen, in such a way as not to amount to receiving, the nature of the property, as well as the circumstances under which it was being made away with, must be taken into consideration.—Reg. v. Harishankar Fakirbhai and another, 2 Bombay H.C. Rep. 136.

### *Cheating.*

**Sect. 415. *Cheating.***—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do, or omit to do, anything which he would not do or omit if he were not so deceived, and which act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation, or property, is said to “cheat.”

*Explanation.*—A dishonest concealment of facts is a deception within the meaning of this section.

### *Illustrations.*

- (a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.
- (b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.
- (c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with

the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

- (d) A, by tendering in payment for an article, a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.
- (e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.
- (f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him, and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.
- (g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant, which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery: A cheats. But if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract, and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.
- (h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.
- (i) A sells and conveys an estate to B. A knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

**Sect. 416. *Cheating by Personation.***—A person is said to “cheat by personation,” if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

*Explanation.*—The offence is committed whether the individual personated is a real or imaginary person.

*Illustrations.*

- (a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.
- (b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

**Sect. 417. *Punishment for Cheating.***—Whoever cheats shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

**Note.**—For Sect. 418, see p. 361.

**Sect. 419. *Punishment for Cheating by Personation.***—Whoever cheats by personation, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Note.**—Sect. 75 provides for increased punishment for a second offence.

*Offences under Sect. 417 are triable by a magistrate of the first or second class; those under Sect. 419, by the Court of Session or magistrate of first or second class. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

*Charge.*

That you, the said A B, on or about the                      day of                      , at                      , did cheat (by personation) [to wit, by falsely pretending to one C D that you the said A B were in the Civil Service of Her Majesty the Queen in India, and thereby deceiving the said C D, and dishonestly inducing him to let you, the said A B, have certain goods on credit, for which you did not mean to pay]; and that you, the said A B, have thereby committed an offence punishable under Sect. 417 (419) of the Indian Penal Code, and within, &c.

*Evidence.*

Under the English law, the false pretence must be as to an existing fact, but under the Indian Penal Code, it may be as to a future state of affairs. Cases founded upon this extension of the law will require to be treated very cautiously, and the law must be administered within very strict limits. If a man buys goods, saying that

he has money to pay for them, and that statement is false, evidence that, at the time he ordered the goods, he was living in wretched lodgings, or was largely indebted to persons who were unable to get their money from him, or was greatly in debt for his rent, &c., will conclusively show that his statement is false. But if a man say that he will pay for goods in three months, the fact that, at the time he makes such promise, he is in poverty, will be no conclusive proof of dishonesty, as it would be quite possible that he was expecting a sum of money to come to hand at the time he promised payment. In cases, therefore, of a false pretence as to a future state of circumstances, the proof of deceit must be very much more carefully prepared than in the case of a false pretence as to an existing fact. It has accordingly been held that a mere breach of contract is not even *prima facie* evidence of an original intention to defraud.—Madras H.C. Cr. P. 90 of 1863.

A person who obtains from a pawnbroker, as in Illustration (e), upon an article which he falsely represents to be silver, a greater advance than would otherwise have been made, is guilty of a false pretence; although the pawnbroker have the opportunity of testing the article at the time.—Reg. v. Ball, C. and Mar. 249. But if the person pledging simply asked a certain sum which would be lent only in the event of the article being silver, and made no false statement as to its composition, and the pawnbroker, after testing it, advanced the money, it would be a question of fact for the jury to determine, from the proportion the sum asked for bore to the value of the article, and from other surrounding circumstances, whether the defendant was intentionally deceiving the pawnbroker as to the material of which the article was made, or whether he was only endeavouring to get as much as possible advanced upon it.

A false representation merely as to the *quality* of goods sold or pledged is not indictable. The defendant was convicted on an indictment for obtaining money by false pretences, the pretences charged being that certain spoons were of the best quality; that they were equal to Elkington's A (meaning spoons made by Messrs Elkington, and stamped by them with the letter A); that the foundations were of the best material; and that they had as much silver on them as Elkington's A. The representations were made to a pawnbroker for the purpose of obtaining, and the defendant did thereby obtain, advances of money on the spoons, which were in

fact of inferior quality, and were of less value than the money advanced upon them; and the pawnbroker stated that he was induced by the defendant's misrepresentations alone to advance the money, and that if he had known the real quality of the spoons, he would have advanced no money on them. The jury found the defendant guilty of fraudulently and falsely representing that the spoons had as much silver on them as Elkington's A, and that the foundations were of the best material, &c., and that he thereby obtained the money. It was, nevertheless, held by a large majority of the judges, that the conviction could not be sustained.—*Reg. v. Bryan*, 26 L.J.N.S.M.C. 84. In that case Lord Campbell, C.J., said: "The statement made by the prisoner resolves itself into a mere representation of the quality of the articles sold. We must also bear in mind that the articles sold were of the species which they were represented to be, because they were spoons with silver on them, and the purchaser obtained these spoons, though the quality was not what it was represented to be. Now it seems to me that it never could be the intention of the legislature to make it an indictable offence for the seller to exaggerate the quality of the goods he was selling, any more than it would be an indictable offence for the purchaser to depreciate their quality, and to say that they were not equal to what they really were, and so to induce the seller to part with the goods at a lower price. To make either act indictable would be an alarming extension of the criminal law." Acting on this decision, the following state of facts was held to constitute no false pretence: L and W induced the prosecutor to buy certain plated goods at an auction, at which L was acting as auctioneer, for £7, on the representation that they were the best silver plate, lined with gold, and worth £20. The foundation of the goods was Britannia metal, instead of nickel as in the best goods, covered with a transparent film of silver, and they were worth only about 30s.—*Reg. v. Levine & Wood*, 10 Cox, Crim. Cases, 374, in which case the Common Serjeant, after consulting with the Recorder of London, said: "It is most important not to bring within the criminal law the ordinary enhancing of value and quality by the seller of goods. There is always a conflict of knowledge and skill between a buyer and seller, the one wishing to buy, and the other to sell, as advantageously as he possibly can, and it would be very dangerous to extend the criminal law to such cases."

The difference between these cases and that put in Illustration (c) is, that there the pretence is that a certain sample is a portion of a larger bulk of which it represents the quality, while here the pretence is merely that the articles to be sold are equal to a certain standard.

Wherever the prosecutor himself knows the falsehood of the pretence, but parts with his money or goods notwithstanding, the defendant cannot be convicted, because he deceives no one.—*Reg. v. Mills*, 1 Dears. and B.C.C. 205. But his having the means of such knowledge will not of itself excuse the defendant; for example, where the defendant falsely represented a £1 Irish bank-note to be a £5 note, and thereby obtained the full value of a £5 note, although the prosecutor could read, and the note on the face of it furnished the means of detecting the fraud, the defendant was held to be properly convicted.—*Reg. v. Jessop*, 1 Dears. and B.C.C. 442. Where the defendant, by false and fraudulent representations as to the value and profits of his business, induced the prosecutor to enter into partnership with him, and to advance £500 as part of the capital of the concern, and the prosecutor, after such advance, recognised and acted in the partnership, it was held that this was not obtaining money by false pretences, for the prosecutor, as partner, continued to be interested in the money. And whatever damage might come, would be through subsequent acts of the defendant at a time when the prosecutor had still a control over the application of the money.—*Reg. v. Watson*, 1 Dears. and B.C.C. 348. It is no bar to a conviction, that the prosecutor intended to cheat the defendant if he could.—*Reg. v. Hudson*, 1 Bell, C.C. 263. Where A owed B a debt, of which he could not get payment, and C, B's servant, went to A's wife, and obtained from her two sacks of malt, saying that B had bought them of A, and C knew this to be false, but took the malt to B, his master, to enable him to pay himself the debt; it was held that C could not be convicted of obtaining the malt by false pretences.—*R. v. Williams*, 7 C. and P. 554. Travelling in a railway carriage, of a higher class than paid for, is not cheating under Sect. 417, but is indictable under the Railway Act xviii. of 1854.—*Reg. v. Darjabhoy Parjaram*, 1 Bombay H.C. Rep. 140. Nor is secretly entering an exhibition building without having purchased an admission ticket.—*Reg. v. Mehervanji Bejanji*, 6 Bomb. H.C. Rep. C.C. 6. Falsely deposing in the

name of another is not cheating by personation, but giving false evidence.—Reg. v. Prema Bhicka, 1 *Id.* 89. A man, named Yesu, gave the accused four annas with which to purchase for him (Yesu) a stamp. When the stamp-collector asked the accused for his name, he said “Yesu,” instead of giving his own name. It was held that this was furnishing false information, and not cheating by personation.—Reg. v. Raghoji bin Kanoji, 3 Bombay H.C. Rep. C.C. 42. Where a vendor was proceeding with three other persons to Dacca to register a deed of sale, and falling ill on the way, the three companions went to the registrar’s office, and one of them, having personated the vendor, got registration of the deed; it was held that the prisoner was not guilty of cheating by false representation, as there was no intention of injuring or defrauding any one; but that the conviction should have been under Sects. 93 and 94 of Act xx. of 1866.—Reg. v. Luthi Bewa, 2 Ben. L.R.A. Cr. J. 25, and 11 W.R. Crim. 24.

An indictment for cheating, under Sects. 415 and 420, should state that the property obtained was the property of the person cheated. But, an indictment defective in this respect is defective for uncertainty only, and must be objected to before the jury is sworn.—Reg. v. Willans, 1 Madras H.C. Rep. 31.

It must be distinctly proved that the representations were in fact false, and false to the knowledge of the defendant.

The expression of the Code, “damage or harm in body, mind, reputation,” is peculiar, and much involved in it would be more serious than cheating, and would fall under other sections. It has, however, received a little elucidation in Bengal, where it has been held that to induce a high caste man to marry a low caste woman, by pretending that she was of higher caste, is cheating by personation within the meaning of Sect. 416.—3 R.C.C. Cr. 32. See also Reg. v. Mohim Chunder Sil, 16 W.R. Crim. 42; where the accused, who had represented to the prosecutor that a girl was a Brahminee, and thereby induced him to part with his money on consideration of the marriage of the girl to his brother, when the girl was really of the Sudra caste, was held to have committed the offence of cheating by personation.

### *Aggravated Cheating.*

**Sect. 418.** *Cheating by a Person bound to protect the interest of*



*Party cheated.*—Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law or by a legal contract to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Note.**—For Sect. 419, see p. 357.

**Sect. 420.** *Cheating, and dishonestly inducing a delivery of Property.*—Whoever cheats, and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter, or destroy the whole, or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Note.**—Sect. 75 provides for increased punishment for a second offence.

*Offences under Sect. 420 are triable by the Court of Session or magistrate of the first class; those under Sect. 418 by the Court of Session or a magistrate of the first or second class. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

### *Charge.*

That you, the said A B, on or about the       day of  
at       , did cheat, to wit, by, &c. (as in preceding charge, *ante*, p. 357), well knowing that you, the said A B, were likely by such cheating to cause wrongful loss to a certain person, to wit, C D, whose interest in the transaction to which such cheating related, you, the said A B, were bound by law to protect (*or* and by such cheating dishonestly did induce the said C D to make and deliver to a certain person, to wit E F, a certain signed document, to wit, a blank signed cheque, which was capable of being converted into a valuable security); and that you have thereby committed an offence punishable under Sect. 418 (420) of the Indian Penal Code, and within, &c.

### *Evidence.*

The cheating must be proved, as in the previous case. In addi-

tion, it must be shown that the person cheating was bound by law, or by special contract, to take care of the interest of the party cheated. Such a person would be a clerk, servant, or agent employed generally in the prosecutor's business; or a broker or auctioneer employed on one or more occasions in transacting his business. Under Sect. 418, it is necessary to prove that wrongful loss, as defined by Sect. 23, has accrued, or is likely to accrue to the prosecutor.

Where a charge is brought under Sect. 420, evidence must be adduced to show that some property has been actually delivered in consequence of the cheat, or some document, capable of being a valuable security, made, altered, or destroyed. It was, doubtlessly, intended that the whole of the acts mentioned in this section should be regarded as offences graver in nature than any referred to in Sect. 415, but it is difficult to see in what way the expression, "induces the person deceived to deliver any property to any person," is larger, or constitutes a graver offence, than "induces the person so deceived to do or omit to do anything which he would not do, or omit, if he were not so deceived, and which act or omission causes, or is likely to cause, damage or harm to that person in . . . property;" as the latter words would most certainly include a delivery of property. The other offences are of a more serious nature than those referred to in Sect. 415, inasmuch as they involve such an amount of art or persistence on the part of the deceiver, as to induce the deceived to do such a deliberate act as sign a document which thereby becomes the evidence of title to property of some description. The term "valuable security," is explained in Sect. 30, *ante*, p. 27.

It may be observed here that neither the Penal nor the Criminal Procedure Code contains any definition of the word "property," which is to be found only in the High Court Act xviii. of 1862, Sect. 57.

### *Fraudulent Deeds and Dispositions of Property.*

**Sect. 421. Dishonest Removal of Property to prevent Distribution among Creditors.**—Whoever dishonestly or fraudulently removes, conceals, or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely

that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 422.** *Dishonestly preventing being made available for his Creditors a Debt, &c., due to the Offender.*—Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 423.** *Dishonest Execution of a Deed of Transfer containing a false statement of consideration.*—Whoever dishonestly or fraudulently signs, executes, or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 424.** *Dishonest Removal, &c., of Property.*—Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Note.**—*Triable by a magistrate of the first or second class. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

#### *Charge.*

That you, the said A B, on or about the                      day of                      , at                      , dishonestly and fraudulently did transfer to a certain person, to wit, C D, without adequate consideration, certain property, to wit, ten bales of cotton, intending thereby to prevent the distribution of that property according to law among the creditors of you, the said A B; and that you have thereby committed an

offence punishable under Sect. 421 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove the removal, concealment, or transfer of property by the accused, and show that it was on inadequate consideration. This, in itself, is no offence, as an individual is at liberty to part with his property at any price he pleases, provided he injures no one else but himself by such transfer; therefore, to constitute an offence, it will be necessary to show that such transfer or removal was dishonest and fraudulent. This will have to be shown from the mode of removal or transfer, and also from the fact that the accused had taken the benefit of some law relating to insolvents, or was at the time actually in an insolvent state. In the case of concealment of property, the very act of concealment goes a great way to show that it is dishonest and fraudulent, because a man does not under ordinary circumstances conceal property.

The law relating to Insolvent Debtors in India (11 Vict. c. 21, ss. 50, 70) contains provisions for the punishment of an insolvent who fraudulently makes away with or conceals his property with the intention of diminishing the fund to be divided amongst his creditors, or of giving undue preference to any of his creditors, and also punishes the fraudulent destruction or falsification of books and papers. This statute, which applies only within the jurisdiction of the High Courts, is not affected by the Penal Code. Act viii. of 1859, Sects. 280-282, contains provisions by which a person in prison may obtain his discharge on surrendering the whole of his property for the benefit of his creditors, and punishes fraudulent concealment or transfer of property. The fraudulent falsifying of books, &c., may also come within the sections relating to the fabricating of false evidence, *ante*, p. 161, and the withholding and destroying of books may be reached by the provisions of Sects. 175 and 204, pp. 144, 179, respectively. Some of the offences created by these sections may also be reached by Sects. 206-210, pp. 181, 182. The distinction between the two classes of sections is, that in the former the acts prohibited are regarded as frauds upon the courts of justice, while in these they are punished as frauds upon the defendant's creditors.

With respect to what is a fraudulent conveyance, the following

resolutions of the judges are given as the signs of fraud in Twyne's Case, 1 Smith's L.C. 2:—

1. That this gift had the signs and marks of fraud, because the gift is general, without any exception of his apparel, or anything of necessity; for it is commonly said, *quod dolosus versatur in generalibus*.

2. The donor continued in possession, and used them as his own; and by reason thereof he traded and trafficked with others, and defrauded and deceived them.

3. It was made in secret, *et dona clandestina sunt semper suspiciosa*.

4. It was made pending the writ.

5. Here was a trust between the parties, for the donor possessed all, and used them as his proper goods, and fraud is always apparelled and clad with a trust, and trust is the cover of fraud.

6. The deed contains, that the gift was made honestly, truly, and *bond fide*; *et clausulæ inconsuetæ semper inducunt suspicionem*.

For cases in which certain transfers and conveyances have been held to be fraudulent, the reader is referred to the notes on Twyne's Case, in the first volume of Smith's Leading Cases, p. 10.

The removal of partnership books by one partner to defraud the other partners comes under this section.—*In re Gour Benode Dutt*, 21 W.R. 10.

#### OFFENCES INVOLVING INJURY AND TRESPASS TO PROPERTY.

##### *Mischief.*

**Sect. 425. Mischief.**—Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously, commits "mischief."

*Explanation 1.*—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or

damage to any person by injuring any property, whether it belongs to that person or not.

*Explanation 2.*—Mischief may be committed by any act affecting property belonging to the person who commits the act, or to that person and others jointly.

*Illustrations.*

- (a) A voluntarily burns a valuable security belonging to Z, intending to cause wrongful loss to Z. A has committed mischief.
- (b) A introduces water into an ice-house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.
- (c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.
- (d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.
- (e) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.
- (f) A causes a ship to be cast away, intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.
- (g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.
- (h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

**Sect. 426.** *Punishment for Mischief.*—Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

**Sect. 427.** *Mischief causing damage to the amount of 50 Rupees.*

—Whoever commits mischief, and thereby causes loss or damage to the amount of fifty Rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 428.** *Mischief by killing, &c., any Animal of the value of Ten Rupees.*—Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any animal or animals of the value of ten Rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 429.** *Mischief by killing, &c., certain Cattle or any Animal of the value of Fifty Rupees.*—Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of fifty Rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

**Sect. 430.** *Mischief by Injury to Works of Irrigation, &c.*—Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause a diminution of the supply of water for agricultural purposes, or for food or drink for human beings, or for animals which are property, or for cleanliness, or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

**Sect. 431.** *Mischief by Injury to Public Road, &c.*—Whoever commits mischief by doing any act which renders, or which he knows to be likely to render any public road, bridge, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

**Sect. 432.** *Mischief by causing Inundation, &c.*—Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause an inundation or an obstruction to any public drainage, attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

**Sect. 433.** *Mischief by destroying, &c., a Lighthouse, &c.*—

Whoever commits mischief by destroying or moving any lighthouse, or other light used as a sea-mark, or any sea-mark, or buoy, or other thing placed as a guide for navigators, or by any act which renders any such lighthouse, sea-mark, buoy, or other such thing as aforesaid, less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

**Sect. 434.** *Mischief by destroying, &c., a Land-mark fixed by public Authority.*—Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**Sect. 435.** *Mischief by Fire, &c., with intent to cause Damage to amount of One hundred Rupees.*—Whoever commits mischief by fire, or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause damage to any property to the amount of one hundred Rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Sect. 436.** *Mischief by Fire, &c., with intent to destroy a House, &c.*—Whoever commits mischief by fire, or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause the destruction of any building which is ordinarily used as a place of worship, or as a human dwelling, or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 437.** *Mischief with intent to Destroy, &c., a decked Vessel, &c.*—Whoever commits mischief to any decked vessel, or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 438.** *Punishment for the Mischief described in the last Section when committed by Fire, &c.*—Whoever commits or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with



transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 439.** *Punishment for intentionally running Vessel aground, with intent to commit Theft.*—Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein, or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 440.** *Mischief committed after preparation made for causing Death or Hurt.*—Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

**Note.**—*Offences under Sect. 426 are triable by any magistrate; those under Sects. 427, 428, and 434, by a magistrate of the first or second class; those under Sects. 429-432, by the Court of Session, or a magistrate of the first or second class; those under Sects. 433, and 435-440, by the Court of Session. A summons should issue under Sect. 426, and a warrant in all other cases. Police officers may not arrest without a warrant, under Sects. 426-429, and 434; but they may under Sects. 430-433, and 435-440. Defendants are bailable under Sects. 426-435, but not under Sects. 436-440.*

#### *Charge.*

That you, on or about the            day of            , at            , did commit mischief (by destroying, &c.); and that you have thereby committed an offence punishable under Sect. 426 of the Indian Penal Code, and within, &c.

#### *Evidence.*

The defendant must be proved to have destroyed some property, or caused such a change in the property or in its situation as destroys or diminishes its value or utility, or affects it injuriously. But, according to a ruling in Madras, it is not sufficient to show

that the destruction or change caused, was a probable result of the act proved; such destruction or change must be shown to have been the direct act of the defendant.—7 Mad. H.C. Reps. 39. It has been suggested that a false report circulated about a public company, &c., by which the shares become of less value, “causes a change in property which diminishes its value or affects it injuriously;” but it is obvious that such can scarcely be a fair interpretation of the section, as the property remains in exactly the same state, its value only is changed. The change referred to in these sections must be a physical change, in internal composition, or external form; such, for instance, as mixing vinegar with wine, or painting a marble statue some absurd colour.

The intent of the defendant in doing the act must also be shown. If the act be done wilfully and wantonly, and it be one that destroys property, or so changes it or its situation as to destroy or diminish its value or utility, or to affect it injuriously, the mere doing of it will be a sufficient ground from which to infer the intent. Many acts of pure fun, strictly coming within the definition of mischief, will be excused by Sect. 95. If the wilfulness or wantonness be not apparent on the face of the act, it must be shown that it was done with the intention of causing loss or damage.—*In re Araz Sircar*, 10 W.R. Crim. 29. Thus, to show the intent with which the act was done, upon an indictment for administering sulphuric acid to a horse, evidence may be given of other acts of administering.—*R. v. Mogg*, 4 C. and P. 364. Cases of mere carelessness do not come within Sect. 425.—*In re Araz Sircar*, *ubi sup.* Mere neglect on the part of an owner of cattle to keep them from straying into fields is not causing cattle to enter into a compound within the meaning of Sect. 425; the section requires that, before the owner is convicted, it must be proved that he *actually caused* the cattle to enter, knowing that by so doing he was likely to cause damage.—*Forbes v. Girish Chunder Bhattacharjee*, 6 Ben. L.R. App. 3, and 14 W.R. Crim. 31; see also 6 Madras H.C. Rep. App. 36. So, too, where the accused were floating timber through a bridge, and some of the logs had struck against the arch of the bridge, causing injury, and the accused had been convicted of committing mischief, the High Court quashed the conviction.—5 Madras, H.C. Rep. App. 40.

Where the prisoner set fire to a cow-house, in which was a cow,

Taunton, J., held that the prisoner could be convicted upon an indictment charging him with killing the cow.—*R. v. Haughton*, 5 C. and P. 559.

Where a person levelled, filled up, and cultivated a watercourse over his own lands, which conveyed water to the land of the prosecutor, it was held that this act was mischief within the meaning of Sect. 425, if the defendant knew that the prosecutor was entitled to the water, and that by this act his right would be obstructed.—2 R.C.C. Cr. 47. But where the right to a fishery was in dispute between the zemindar of Bally and the zemindar of Moharajpore, and the former had obtained a decree in the civil court declaring the fishery to be his, in proceedings to which the latter was not a party, and the servants of the zemindar of Bally thereupon removed a bamboo bar which the Moharajpore people had erected to prevent the passage of fish, and for this they were convicted of mischief and punished by fine; it was held, on reference to the High Court, that the conviction could not stand, as the Moharajpore zemindar had not shown that he was legally entitled to the fishery in dispute, and it did not appear that the defendants were acting otherwise than under a *bond fide* belief that the Moharajpore people were encroaching on their master's rights, and, in so removing a bar which interfered with those rights, it could not be said that they acted with intent to cause, or knowing it to be likely that they would cause wrongful loss to the opposing party.—*Bakar Halsana v. Dinobandhu Biswas*, 3 Ben. L.R.A. Cr. J. 17; and 12 W.R. Crim. 1, *sub. nom.*; *Reg. v. Denoo Bundhoo Biswas*. This decision was principally based upon the passage in Blackstone's 'Commentaries,' book 3, chap. i., where it is said: "Whatsoever unlawfully annoys or doth damage to another is a nuisance, and such nuisance may be abated, that is, taken away by the party aggrieved thereby, so that he commits no riot (or breach of the peace) in doing it. If a new gate be erected across a public highway, which is a common nuisance, any of the king's subjects passing that way may cut it down and destroy it."

*Animals.*—A calf does not come within the terms "bull, cow, or ox," and therefore if not worth fifty Rupees, its destruction must be dealt with under Sect. 426 or Sect. 428, according to its value.—*Reg. v. Cholay*, *per* Scotland, C.J., 4th Madras Sess. 1864. Under Sect. 428 it is not necessary that the damage to each animal

should amount to ten Rupees, it is sufficient that the total damage to any number of animals should equal that amount, while under Sect. 429 the damage to each animal, other than those specially enumerated, must amount to fifty Rupees at least.

To constitute a *maiming* a *permanent* injury must be proved.—Reg. v. Jeans, 1 C. and K. 539. Looking to this decision, it would seem that a mere administering of poison would not amount to poisoning, but that there must be some serious results, some constitutional disturbance in consequence of the administering. So, too, in respect of rendering useless, it would seem that also must be permanent. To support a conviction for wounding, it is not necessary to show that any instrument or weapon was used, it is sufficient if there be a wound inflicted by the hand.—Rex. v. Bullock, 1 L.R.C.C. 118, and 37 L.J.N.S.M.C. 45. The definition of a wound, in criminal cases, is an injury to the person by which the skin is broken.—Moriarty v. Brooks, 6 C. and P. 684; Rex v. Beckett, 1 M. and Rob. 526. It is necessary that there should be a separation of the whole skin; and a separation of the cuticle or upper skin only is not sufficient.—Reg. v. M'Loughlin, 8 C. and P. 635.

If the mischief be done by fire, or any explosive substance, and injury be done to any person, or if human life be destroyed thereby, the offence will be punishable under the sections relating to injuries to the person. In a case of mischief by fire, with intent to cause the destruction of a dwelling-house, the charge should lay the intent as an intent to cause the destruction, not of a house simply, but of a house used as a human dwelling.—Reg. v. Durbarro Polie, 8 W.R. Crim. 31.

It is not illegal to convict prisoners first of mischief for cutting down Government trees without leave, and then of theft for subsequently stealing the trees so cut down.—Reg. v. Narayan Krishna and another, 2 Bombay H.C. Rep. 416. The High Court at Calcutta has, however, ruled that a prisoner cannot be convicted first of mischief for killing a buffalo, and then of theft on taking away the dead carcass.—Reg. v. Sahral, 8 W.R. Crim. 3. This case was decided under the old Criminal Procedure Code. But the decision would virtually hold now, if it were found as fact that the theft of the buffalo was the substantive criminal act, the intention of committing which led to the previous act of killing the buffalo. In

such case the prisoners could now be tried and convicted of *both* offences, but punished for only the greater.—Note to Sect. 454, Criminal Procedure Code.

*Criminal Trespass.*

**Sect. 441. *Criminal Trespass.***—Whoever enters into or upon property in the possession of another, with intent to commit an offence, or to intimidate, insult, or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there, with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass.”

Where A and B were accused by C of criminal trespass under this section for fishing in a lake belonging to C, over which, however, A and B asserted a prescriptive right of fishery; C, too, having failed to establish between himself and A and B the relationship of landlord and tenant in a suit against A and B for rent, it was held that A and B were not by their conduct brought within the purview of this section, and that C's remedy was by civil suit.—*Shristidhar Parol v. Indrobhoosun Chuckerbutty*, 18 W.R. Crim. 25, and *sub nom. in re Shistidur Parui*, 9 B.L.R. 19. See *Reg. v. Kalinath Nag Chowdhry*, 9 W.R. Crim. 1.

**Sect. 442. *House-Trespass.***—Whoever commits criminal trespass by entering into or remaining in any building, tent, or vessel, used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit “house-trespass.”

*Explanation.*—The introduction of any part of the criminal trespasser's body is an entering sufficient to constitute house-trespass.

**Sect. 443. *Lurking House-Trespass.***—Whoever commits house-trespass, having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel, which is the subject of the trespass, is said to commit “lurking house-trespass.”

**Sect. 444. *Lurking House-Trespass by Night.***—Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit “lurking house-trespass by night.”

**Sect. 445. *House-breaking.***—A person is said to commit “house-breaking” who commits house-trespass, if he effects his entrance

into the house, or any part of it, in any of the six ways hereinafter described: or if, being in the house, or any part of it, for the purpose of committing an offence, or having committed an offence therein, he quits the house, or any part of it in any of such six ways, that is to say:—

*First*, If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

*Secondly*, If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance, or through any passage to which he has obtained access by scaling or climbing over any wall or building.

*Thirdly*, If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

*Fourthly*, If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

*Fifthly*, If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

*Sixthly*, If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

*Explanation.*—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

#### *Illustrations.*

- (a) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.
- (b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.
- (c) A commits house-trespass by entering Z's house through a window. This is house-breaking.

- (d) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.
- (e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.
- (f) A finds the key of Z's house-door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.
- (g) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.
- (h) Z, the doorkeeper of Y, is standing in Y's doorway, A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

**Sect. 446. *House-breaking by Night.***—Whoever commits house-breaking after sunset and before sunrise, is said to commit “house-breaking by night.”

**Note.**

*Evidence.*

All the latter offences are modifications of criminal trespass. In order to constitute the offence of criminal trespass, there must be an entry into, or upon, or a remaining upon property in the possession of another. The word property must necessarily mean corporeal property, as lands and houses, or vessels. The property, too, must be in the possession of some one, and that possession must be actual, not constructive, as the act intended to be done, which makes the trespass criminal, must be done to the person in possession and on the property. There is no definition of the word possession. The owner of property, or his wife, clerk, servant, or agent, being on or in the property, is in possession of it; but is a trespasser or a mere licensee upon or in property, so in possession of it as to cause the offence of criminal trespass to arise, as against another party? The omission of the definition of the word possession leaves this an open question. On this point, Peacock, C.J., said: “A trespasser cannot, by the very act of trespass, imme-

diately, and without acquiescence on the part of the owner, become possessed of the land or house upon which he has trespassed, and which he tortiously holds. But if he is allowed to continue on the land, or in the house, and the owner of the same sleeps upon his rights, and makes no effort to remove him, he will gain a possession, wrongful though it be, and cannot be forcibly ejected. The rightful owner cannot in any case, when he has a right of entry, be made responsible in damages for a trespass upon his own land, for he is not a trespasser if he has a right to go upon it. But if he assaults and expels persons who, having originally come into possession lawfully, continue to hold unlawfully after their title to occupy has been determined, he may be made responsible for the assault, and indicted for the forcible entry."—3 R.C.C.S.C. 5. If one person enters forcibly upon property in the possession of another, and there does an act with intent to intimidate, insult, or annoy the person in possession, he is guilty of criminal trespass, without reference to the question as to whom the *title* to the land may ultimately be found to be in—1 W.R. Crim. 2; and a magistrate ought not to decline to go into a charge of criminal trespass merely because the complainant does not make out his *title* to the land, he being in actual possession—Reg. v. Surwan Singh, 11 W.R. Crim. 11. The entrance of a member of a joint Hindoo family into the family dwelling-place cannot be criminal trespass, nor is the entry of a stranger with the permission and licence of one of the members.—*In re Prankishna Chandra*, 6 Ben. L.R. App. 80, and 15 W.R. Crim. 6.

The entry into or remaining upon the property must be with the intent of doing some act punishable under the Penal Code, and this act (or offence) need not be done to or in respect of the person in possession, but to or in respect of any person; or else the entry must be for the purpose of intimidating, insulting, or annoying the person in possession. The meaning of intimidation and insult is not difficult to understand; but in what consists annoyance? The mere presence of a particular person may be annoying, but, unless he is present with the intent to annoy, he has not committed criminal trespass. A creditor calling on his debtor may constitute an annoyance, and the creditor, knowing it, may call simply for the purpose of annoyance, and not really to get payment of the debt; would the creditor be a criminal trespasser? It would be difficult



to convict him, as he would always have a lawful excuse for entering; but if, after having demanded his debt, and received his answer, he remained to annoy, he would undoubtedly be a criminal trespasser. This section, especially in this particular, must be read in the light of Sect. 95. Where the accused secretly entered an exhibition building without having purchased a ticket, and was there apprehended, it was held that such entry, unaccompanied by any of the intents specified in Sect. 441, does not amount to the offence of criminal trespass, or in fact to any offence.—Reg. v. Mehervanji Bejanji, 6 Bomb. H.C. Rep. C.C. 6. Where the defendant had ploughed up part of a burial-ground, and had been by the magistrate convicted of criminal trespass, the High Court held that “the person (a corporate body) in possession of the burial-ground is the portion of the public entitled to use it, and the High Court are of opinion that there is evidence of an intent to annoy such person; for the intent of the defendant must be inferred from the nature of his acts; and it is scarcely possible to conceive an act more calculated to cause annoyance, especially to a superstitious people, attaching sanctity to the relics of mortality, than the act of ploughing up a burial-ground.”—6 Madras H.C. Rep. App. 25. But where the defendant had been convicted of criminal trespass in cultivating a portion of the public footpath, it was held that “the public generally are entitled to the use of the footpath, and it is impossible to say that there has been an illegal entry into property in the possession of another, with intent to annoy the person in possession. The defendant might, however, have been convicted of a nuisance.”—*Ib.* 26.

If the entry be into a building, tent, or vessel used as a human building, or into a building used for worship, or for the safe custody of property, the offence becomes that of house-trespass. The entry may, however, be of a different kind from that which constitutes criminal trespass. It would seem that the entry must be with the whole body, unless the offence of house-trespass be committed, and then an entry of any part of the body will be sufficient. The following cases, decided in England, on what constitutes an entry in burglary, will illustrate entry in the case of house-trespass. After breaking the door or window, &c., to step over the threshold, to put in a hand or a finger—*R. v. Davis*, R. and R. 499—is an entry. So if the defendant introduce his hand through a pane of glass, broken

by him, between the outer window and the inner shutter, for the purpose of undoing the window-latch, it is a sufficient entry.—*R. v. Bailey*, R. and R. 341. But if the instrument with which the house is being broken happen to enter the house, but without any intention on the part of the burglar to effect thereby his felonious intent (as, for instance, to draw out the goods) with it, this will not be a sufficient entry to constitute a burglary.—*R. v. Hughes*, 1 Leach, 406. Entering a house with a forged warrant of arrest, and by virtue thereof taking away one of the inmates, amounts to house-trespass.—*Reg. v. Nund Mohun Sirkar*, 12 W.R. Crim. 33. Where the premises in question had been occupied as chambers, but at the time of the offence, and for some time previously were unoccupied, it was held that they were properly described as a “human dwelling.”—*Reg. v. Abboyee*, *per* Scotland, C.J., 4th Madras Session, 1862.

The concealment necessary to constitute lurking house-trespass, would be a concealment in a pantry, under a bed, behind a box, or suchlike.

The provisions of Sect. 445 do away with the necessity of quoting the cases deciding what is a breaking, as they confirm in some instances, and alter in others, the English law, and point out what kinds of entry constitute house-breaking. In most cases the illustrations sufficiently point out the meaning of the section, but there is one illustration omitted, and that is in respect of the second part of the second clause: “if he enters or quits . . . through any passage to which he has obtained access, by scaling, or climbing over any wall or building.” That evidently refers to such a case as the following: A door of a house leading into a closed courtyard is open; a person climbs over the wall of the yard and walks into the open door: he is guilty of house-breaking. But, if the courtyard has a door which is closed, and a person opens that door and then walks into the open house-door, it is not house-breaking. If the prisoner be caught inside a house at night, and the evidence shows that he could only have effected an entrance by scaling a wall, it is house-breaking.—4 R.J. and P. 566.

It is difficult to see the practical distinction between the acts referred to in Clauses 4 and 6 respectively, and the framers of the Code have not given any illustration which can specifically be referred to in the latter only.

The offences of lurking house-trespass and house-breaking are both rendered more serious, by the fact that they are committed between sunset and sunrise.

### *Criminal Trespass.*

**Sect. 447. *Punishment for Criminal Trespass.***—Whoever commits criminal trespass, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, which may extend to five hundred Rupees, or with both.

**Note.**—*Triable by any magistrate. A summons should issue in the first instance. Police officers may arrest without a warrant. Defendants are bailable.*

### *Charge.*

That you, the said A B, on or about the                      day of                      , at                      , did commit criminal trespass (to wit, by entering upon land in the possession of C D, with intent to intimidate the said C D); and that you, the said A B, have thereby committed an offence punishable under Sect. 447 of the Indian Penal Code, and within, &c.

### *Evidence.*

Prove the trespass, and the intent with which it was committed. If it were with the intention of committing an offence, it will in many cases amount to an attempt to commit that offence, and, if punishable more severely as such attempt, should be so laid in the charge; and in this case, the intent will not be difficult to prove. The difficulty will arise where the intent to be proved is to intimidate, insult, or annoy, and there it must be gathered from the surrounding circumstances. If the defendant do actually intimidate, insult, or annoy, he will be punishable under the 503d and following sections. The accused were convicted of criminal trespass in driving their carts across an open green in violation of an order issued by the municipal commissioners; but as there was nothing in the case to show that the municipal commissioners had authority to issue an order prohibiting wheeled vehicles from driving on the green, and as their general powers as public conservators did not give them authority to issue any order, the breach of which would be criminally punishable, the High Court quashed the conviction. —5 Madras H.C. Rep. App. 38.

Though criminal trespass is not one of the offences detailed in Sect. 489 of the Criminal Procedure Code, yet, to a conviction under this section may be added an order that those convicted shall give recognisances to keep the peace if their conduct clearly point to an intention to commit a breach.—Reg. v. Thapoo, 20 W.R. Crim. 37.

### *House-trespass.*

**Sect. 448.** *Punishment for House-trespass.*—Whoever commits house-trespass, shall be punished with imprisonment of either description which may extend to one year, or with fine which may extend to one thousand Rupees, or with both.

**Note.**—*Triable by any magistrate. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are bailable.*

### *Charge.*

That you (the said C D) on or about the                      day of                      , at                      , did commit house-trespass (to wit, by entering the dwelling-house of C D, with intent to insult the said C D); and that you have thereby committed an offence punishable under Sect. 449 of the Indian Penal Code, and within, &c.

### *Evidence.*

All that is necessary on this point, will be found on pp. 276-280.

### *House-trespass with Intent, &c.*

**Sect. 449.** *House-trespass to commit a Capital Offence.*—Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

**Sect. 450.** *House-trespass to commit Offence punishable with Transportation for Life.*—Whoever commits house-trespass in order to the committing of any offence punishable with transportation for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

**Sect. 451.** *House-trespass to commit Offence punishable with Im-*

*prisonment.*—Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

**Sect. 452.** *House-trespass after Preparation.*—Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or of putting any person in fear of hurt or of assault or of wrongful confinement, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

*Note.*—*Offences under Sect. 451 are triable by any magistrate, unless the offence intended to be committed be theft, then by the Court of Session, or a magistrate of the first or second class; those under Sect. 452, by the Court of Session, or a magistrate of the first or second class; those under Sects. 449 and 450, by the Court of Session. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are bailable under Sect. 451 (if the intended offence be not theft), but not otherwise; but not under the other sections.*

### *Charge.*

That you (the said A B) on or about the                      day of                      , at                      , did commit house-trespass (to wit, &c.) in order to the commission of an offence punishable with death, to wit, murder; (or having made preparation to assault a certain person, to wit, C D); and that you have thereby committed an offence punishable under Sect. 449 (452) of the Indian Penal Code, and within, &c.

### *Evidence.*

The house-trespass must be proved as p. 376, &c. The intent with which the house-trespass is committed will be inferred from surrounding circumstances, and in general the evidence will be of an attempt to commit the offence, with the intention of committing which the house was entered. The charge must state that the accused committed the house-trespass with intent to commit some *specific*

offence punishable with death, or with transportation, or with imprisonment, as the case may be.—Reg. v. Mehar Dowalia, 16 W.R. Crim. 63. The proof of preparations for causing hurt, &c., will be the same as under Sect. 382. Where a person goes with a forged warrant of arrest into a house, and takes away one of the inmates by virtue of the warrant, and against his will, he is guilty of house-trespass under Sect. 452.—Reg. v. Nund Mohun Sirkar, 12 W.R. Crim. 33.

*Lurking House-trespass and House-breaking.*

**Sect. 453.** *Punishment for Lurking House-trespass, &c.*—Whoever commits lurking house-trespass or house-breaking shall be punished with imprisonment for a term which may extend to two years, and shall also be liable to fine.

**Note.**—By Act vi. of 1864, Sects. 2, 3, whipping may be substituted as a punishment for a first offence, and either added or substituted as a punishment for a second offence, when committed with the intent of committing any offence punishable with whipping under Sect. 2. And by Sect. 4, on conviction for a second offence, with the intention of committing any offence punishable with whipping under this section, whipping may be added as a punishment.

*Triable by a magistrate of the first or second class. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are not bailable.*

*Charge.*

That you, on or about the                      day of                      , at                      , did commit lurking house-trespass (or house-breaking) (to wit, by, &c.); and that you have thereby committed an offence punishable under Sect. 453 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove the house-trespass as p. 376, &c., and show that the defendant had made preparations for concealing his trespass from some person who had a right to eject him. If the offence charged be house-breaking, then it must be shown that the entry was effected in one of the modes pointed out in Sect. 445. See the remarks on this offence, p. 378.

*House-breaking to commit Offence, &c.*

**Sect. 454.** *Lurking House-trespass, &c., to commit an Offence punishable with Imprisonment.*—Whoever commits lurking house-trespass or house-breaking in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

**Sect. 455.** *Lurking House-trespass, &c., after Preparation for causing Hurt.*—Whoever commits lurking house-trespass or house-breaking having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Note.**—Act vi. of 1864, Sects. 2, 3, 4, provides for the punishment of whipping in certain cases.

*Offences under Sect. 454 are triable by the Court of Session or a magistrate of the first or second class; those under Sect. 455, by the Court of Session or magistrate of the first class. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.*

*Charge.*

That you, on or about the                      day of                      , at                      , did commit lurking house-trespass (or house-breaking) (to wit, by, &c.) in order to the committing of an offence punishable with imprisonment, to wit, adultery (or theft) (or having made preparation for causing hurt to some person); and that you have thereby committed an offence punishable under Sect. 454 (455) of the Indian Penal Code, and within, &c.

*Evidence.*

Prove the house-breaking, &c., as *ante*, p. 378. The intent with which it is committed must be shown by the coterminous acts

of the defendant. The previous preparation to cause hurt, &c., may be proved as p. 328.

*House-breaking, &c., by Night.*

**Sect. 456.** *Punishment for Lurking House-trespass, &c., by Night.*

—Whoever commits lurking house-trespass by night or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**Note.**—Act vi. of 1864, Sects. 2, 3, 4, provide for whipping as a punishment in certain cases.

*Triable by the Court of Session or a magistrate of the first or second class. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.*

*Charge.*

That you (the said A B) on or about the                      day of                      , at                      , did commit lurking house-trespass (or house-breaking) by night (to wit, by, &c., after the hour of sunset and before the hour of sunrise); and that you have thereby committed an offence punishable under Sect. 456 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove the lurking house-trespass or house-breaking, and that it was committed after the hour of sunset, and before that of sunrise.

*House-breaking by Night, &c., to commit Offence, &c.*

**Sect. 457.** *Lurking House-trespass, &c., by Night, to commit an Offence punishable with Imprisonment.*—Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

**Sect. 458.** *Lurking House-trespass, &c., by Night, after preparation for causing Hurt.*—Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for



causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

**Note.**—Act vi. of 1864, Sects. 2, 3, 4, provide for whipping as a punishment in certain cases.

*Offences under Sect. 457 are triable by the Court of Session, or a magistrate of the first or second class; those under Sect. 458 by the Court of Session or a magistrate of the first class. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.*

The charge and evidence in this case will be similar to those under Sects. 454 and 455, except that the offence must be laid and proved to have been committed at night.

It is not necessary to divide the charge into two counts when the facts prove a house-breaking by night with intent to commit theft, and theft in a building. The actual commission of the theft is conclusive evidence of the intent, and it is sufficient to convict for the major offence under Sect. 457.—Madras H.C., 20th January 1868, 2 Madras Jurist, 77; see also Reg. v. Sahrae, 8 W.R. Crim. 31.

Attempting to commit house-breaking by night, with intent to steal, is not punishable with whipping.—Reg. v. Yella Valad Parshia, 3 Bombay H.C. Rep. C.C. 37.

*House-breaking, &c., accompanied by Grievous Hurt, &c.*

**Sect. 459. Grievous Hurt, &c., accompanying House-breaking.**—Whoever, whilst committing lurking house-trespass, or house-breaking, causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Sect. 460. Joint Liability to Punishment for Death, &c., caused in House-breaking.**—If, at the time of the committing of lurking house-trespass by night, or house-breaking by night, any person guilty of such offence shall voluntarily cause, or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night, or house-

breaking by night, shall be punished with transportation for life, or with imprisonment of either description, for a term which may extend to ten years, and shall also be liable to fine.

*Note.—Triable by the Court of Session. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are not bailable.*

### *Charge.*

That you, the said A B, on or about the                      day of                      , at                      , together with certain others, to wit, C D and E F, jointly did commit house-breaking (*or lurking house-trespass*) by night (to wit, by, &c.), and that one of the said persons so committing such offence, to wit, C D, at the time of so committing such offence, did voluntarily cause (*or attempt to cause*) death (*or grievous hurt*) to a certain person, to wit, G H; and that you, the said A B, have thereby committed an offence punishable under Sect. 460 of the Indian Penal Code, and within, &c.

### *Evidence.*

Under Sect. 459 prove the lurking house-trespass or house-breaking, as p. 283; and that, whilst committing such offence, the offender caused grievous hurt, or attempted to cause death or grievous hurt to some person. Under Sect. 460, a lurking house-trespass, or house-breaking by night, by two or more persons, must be proved. It is not necessary that all should assist in the actual breaking and entering, but they must either do that, or else be so near together, while the breaking, &c., is going on, and the death or grievous hurt is being caused, or attempted to be caused, as to be able to give immediate assistance; so that the presence of his companions may be said to give aid and encouragement to the one who is actually committing the more serious offence.

Under neither of these sections is it necessary to show that the accused went out with the intention of causing death, &c. It is sufficient to show that, while the house-breaking, &c., was being committed, death, &c., was caused, or attempted to be caused.

The punishment of whipping cannot be inflicted under these sections, unless the accused is also charged with, and found guilty of, committing the principal offence with the intention of, at the

same time, or thereby, committing an offence punishable with whipping, under Sect. 2 or 4 of the Whipping Act.

*Opening closed Receptacle for Property.*

**Sect. 461.** *Breaking open closed Receptacle containing Property.*—Whoever dishonestly, or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains, or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 462.** *Breaking open by Person intrusted with custody.*—Whoever, being intrusted with any closed receptacle which contains, or which he believes to contain property, without having authority to open the same, dishonestly, or, with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Note.**—*Offences under Sect. 461 are triable by a magistrate of the first or second class; those under Sect. 462 by the Court of Session or a magistrate of the first or second class. A warrant should issue in the first instance. Police officers may arrest without a warrant. Defendants are bailable.*

*Charge.*

That you, on or about the                      day of                      at                      , dishonestly (*or with intent to commit mischief*) did break open (*or unfasten*) a certain closed receptacle, to wit, an iron chest, which contained (*or which you supposed to contain*) property, to wit, four bills of exchange for £100 each (which said closed receptacle had been intrusted to you without any authority to open the same); and that you have thereby committed an offence punishable under Sect. 461 (462) of the Indian Penal Code, and within, &c.

*Evidence.*

The evidence to support these charges will be exactly the same as if the charge had been one of stealing the contents of the closed receptacle. In fact, these two offences amount to attempts to commit theft, criminal breach of trust, and mischief respectively,

according to the definition of attempts, and the illustration of an attempt to steal given in Sect. 511.

A large circular receptacle for grain, constructed of straw, with an opening in the top, and situated in a back yard, was held not to be "a place for the custody of property," within the meaning of Sect. 442, and therefore that the offence of house-breaking could not be committed in respect of it; but that the offence really committed was, the dishonestly breaking open a closed receptacle containing property.—Rulings of Madras H.C. 1865, on Sect. 457.

## CHAPTER XVIII.

### OFFENCES RELATING TO DOCUMENTS, AND TRADE AND PROPERTY MARKS.

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#### OFFENCES RELATING TO DOCUMENTS.

##### *Forgery of Documents.*

**Sect. 463. Forgery.**—Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed, commits forgery.

**Sect. 464. Making a False Document.**—A person is said to make a false document—

*First,* Who dishonestly or fraudulently makes, signs, seals, or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed ; or

*Secondly,* Who, without lawful authority, dishonestly or fraudulently by cancellation or otherwise alters a document in any material part thereof, after it has been made or executed, either by himself or by any other person, whether such person be living or dead at the time of such alteration ; or

*Thirdly*, Who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration.

*Illustrations.*

- (a) A has a letter of credit upon B for Rupees 10,000, written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 100,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.
- (b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase money. A has committed forgery.
- (c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand Rupees. A commits forgery.
- (d) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable, and authorises B to fill up the cheque by inserting a sum not exceeding ten thousand Rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand Rupees. B commits forgery.
- (e) A draws a Bill of Exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker, and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker, by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.
- (f) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B, and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

- (g) A endorses a Government Promissory Note and makes it payable to Z, or his order, by writing on the bill the words "Pay to Z, or his order," and signing the endorsement. B dishonestly erases the words "Pay to Z, or his order," and thereby converts the special endorsement into a blank endorsement. B commits forgery.
- (h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.
- (i) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.
- (j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character, and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.
- (k) A without B's authority writes a letter and signs it in B's name, certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an expressed or implied contract for service.

*Explanation 1.*—A man's signature of his own name may amount to forgery.

• *Illustrations.*

- (a) A signs his own name to a Bill of Exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.
- (b) A writes the word "accepted" on a piece of paper and signs

it with Z's name, in order that B may afterwards write on the paper a Bill of Exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

- (c) A picks up a Bill of Exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable. Here A has committed forgery.
- (d) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent, and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.
- (e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors, and in order to give a colour to the transaction, writes a promissory note, binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

*Explanation 2.*—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

*Illustration.*

A draws a Bill of Exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person, with intent to negotiate it. A commits forgery.



**Sect. 465. *Punishment for Forgery.***—Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Note.**—By Act vi. of 1864, Sect. 4, whipping may be inflicted in addition to the above punishment for a second offence of forgery, as defined by Sect. 463.

Sect. 469, Criminal Procedure Code, determines what authority is necessary for a prosecution on charge of an offence under Sect. 463.

*Triable by the Court of Session. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

#### *Charge.*

That you, the said A B, on or about the                      day of                      , at                      , forged a certain document, to wit, a letter of recommendation in favour of you, the said A B, purporting to be signed by one C D, with intent to cause a certain person, to wit, E F, to enter into a contract with you, the said A B, to wit, that the said E F should employ you as a clerk; and that you have thereby committed an offence punishable under Sect. 465 of the Indian Penal Code, and within, &c.

*Add a count for using as genuine the forged document, for form of which, see p. 402.*

#### *Evidence.*

Prove that the document alleged to have been forged comes within the terms of the section describing what constitutes "making a false document," for a forgery must be of a "document" or "part of a document."—(Sect. 470 defines a forged document as a false document made wholly or in part by forgery.) Under the English law, the painting an artist's name in the corner of a picture, in order falsely to pass it off as an original picture by that artist, is not a forgery.—*Reg. v. Closs*, 1 Dears. and B.C.C. 460. And where B, the prosecutor, made powders called B's Baking Powders, which he sold in packets wrapped up in printed papers, and the defendant caused a great number of wrappers to be printed, so nearly resembling B's as to deceive persons of ordinary observation, and make them believe they were B's, in which the

defendant enclosed powders of his own, which he fraudulently sold as B's powders ; this was held not to be forgery, but obtaining money by false pretences.—Reg. v. Smith, 1 Dears. and B.C.C. 566. These acts, however, would most likely be held to be forgery under the Indian Penal Code. The latter case would certainly come within the limits of the sections respecting false trade-marks, p. 409 ; and it seems very probable that in both cases the false matter forming the substance of the charge would be held to be a document within the meaning of Sect. 29, especially when reference is made to the definition of a document in the Indian Evidence Act, 1872. The offence of forgery may be committed by a person who fabricates a false document purporting to be a copy of another document for the purpose of the same being used in evidence.—Essan Chunder Dutt v. Baboo Prannauth Chowdry, Marshall's Bengal App. Ca. 270. The forgery of a document which purports on the face of it to be a copy only, and which, even if a genuine copy, would not authorise the delivery of immoveable property, is not punishable under Sect. 467.—Reg. v. Naro Gopal, 5 Bombay H.C. Rep. C.C. 56. The drawer of a cheque which was honoured by the bank on which it was drawn, and returned to him in the usual course of business, afterwards altered his signature so as to give it the appearance of a forgery, to defraud the bank, and to cause the payee of the cheque to be charged with forgery. It was held that this alteration did not constitute a forgery.—Brittain v. The Bank of London, 3 F. and F. 468. But as there was fraudulent intention in the altering of the cheque, and wrongful gain or wrongful loss might have thence arisen, the alteration would, under these sections, amount to forgery.—Reg. v. Bhavanisharakar, 11 Bom. H.C.R. 2.

It must further be proved that the signature, or other part of the document alleged to be false, is not of the handwriting of the party whose it purports to be, by any person acquainted with his handwriting, either from having seen him write, or from being in the habit of corresponding with him. It is sufficient, *prima facie*, to disprove his handwriting, and he need not be called to disprove an authority to others to use his name ; circumstances showing guilty knowledge are enough.—Reg. v. Harley, 2 M. and Rob. 473. The testimony of the person whose handwriting is forged is not deemed the best evidence, and that of other persons only secondary.—R. v. Hughes, 2 East, P.C. 1332 ; R. v. Maguire, *id.* ; R. and R. 378.

The forgery can be proved by the examination of experts, as to the handwriting being genuine or imitation, from its appearance.—Sect. 45 Indian Evidence Act i. of 1872. On an indictment for uttering a forged note, which, it was alleged, had been written over pencil-marks that had been rubbed out, it was held that the evidence of engravers who had examined the paper with a mirror, and traced the pencil-marks, was admissible for the prosecution.—Reg. v. Williams, 8 C. and P. 434.

It must also be proved expressly, or from surrounding circumstances, that the alleged forgery was intended to represent the handwriting of the person whose handwriting it is proved not to be; or that it was attempted to be uttered as the handwriting of a person who never existed.—See *R. v. Sponsonby*, 2 East, P.C. 996, 997; *R. v. Downes*, *id.* 997; and *Reg. v. Shifait Ali*, 2 Ben. L.R.A. Cr. J. 12, and 10 W.R. Crim. 61. Where the defendant uttered a forged note, and said that it was drawn by W. H., of the Bull's Head, it was holden to be sufficient to prove that it was not of the handwriting of that W. H., although it appeared that there was another W. H. living in the neighbourhood.—*R. v. Hampton*, 1 Mood. C.C. 255. Where the prisoner obtained money from B for a cheque on Jones, Lloyd, & Co., purporting to be drawn by G. Andrews in favour of — Newman, Esq., or bearer, telling him that it was for Mr Newman, of Soho Square, in whose service he was for three months, and that Mr Newman had put his name on the back; and it appeared that no person of the name of G. Andrews kept an account with Jones, Lloyd, & Co., and that Mr Newman did not write his name upon the back of the cheque, and that the prisoner never was in his service; Parke, J. (after consulting Gaselee, J.), held this to be sufficient *prima facie* evidence that G. Andrews was a fictitious person, and told the jury that if G. Andrews really drew the cheque, the prisoner might produce him, or give some evidence on the subject.—*R. v. Backler*, 5 C. and P. 113. Where the prisoner was indicted for forging and uttering a cheque on Greenwood & Co., army agents and bankers, purporting to be drawn by J. Weston, and a clerk in the army department was called to prove that J. Weston kept no account with his employers; he also admitted that he did not know the names of all the customers, but added that he knew of no customer named J. Weston, and that, upon inquiry of their clerks, he found that there was no such person; Parke, J.,

with the concurrence of Patteson, J., and Gurney, B., held this to be *prima facie* evidence sufficient to call upon the prisoner to show who J. Weston was.—*R. v. Brannan*, C. and P. 326.

The alleged false document must appear upon the face of it to have been intended to resemble a true document of the description mentioned in the charge, so as to be likely to deceive persons of ordinary capacities—*R. v. Collicott*, 2 Leach, 1048; *R. v. Jones*, 1 Leach, 204; although not perhaps those who might be scientifically acquainted with such documents—*R. v. Hoost*, 2 East, P.C. 950. Even where upon an indictment for forging a bank-note, there appeared to be no water-mark in the forged note, and the word “pounds” was omitted in the body of it, the defendant being convicted, the judges held that the conviction was right.—*R. v. Elliott*, 1 Leach, 175.

If, however, on the other hand, the document is not such as might be passed off as a true document of the description which it purports to be, the defendant ought to be acquitted. A bill of exchange for three guineas, not attested as required by 17 Geo. III. c. 30, s. 1, was holden by the judges not to be the subject of an indictment for forgery; because, if it were a genuine instrument, it would be absolutely void for want of the attestation.—*R. v. Moffatt*, 1 Leach, 431. So a bill of exchange or country bank-note, which, for want of a signature, is incomplete, or a navy bill payable to order—*R. v. Richards*, R. and R. 193; *R. v. Randall*, *id.* 195; *R. v. Pateman*, *id.* 455; *R. v. Butterwich*, 2 M. and Rob. 196—is not the subject of an indictment for forgery.

In these cases the omission absolutely vitiates the document; if, however, the omission do not vitiate it, forgery may be committed. A man may be convicted of forging a will, although it appears in evidence that the pretended testator is alive.—*R. v. Sterling*, 1 Leach, 117; *R. v. Coogan*, *id.* 449. So, a man may be indicted for forgery and uttering a bill of exchange, although the name of the payee was not endorsed on it.—*R. v. Wickes*, R. and R. 149. A man, too, may be indicted for forging an instrument, which, if genuine, could not be made available, by reason of some circumstance not appearing on the face of it, but to be made out by extrinsic evidence.—*R. v. McIntosh*, 2 Leach, 833. Thus, a man may be indicted for forging a deed, though not made in pursuance of the provisions of a particular statute, requiring it to be in a certain form—*R. v. Lyon*, R. and R.

255; *R. v. Froud*, 389; or for forging a cheque, although it be post-dated—*Reg. v. Taylor*, 1 C. and K. 213. The antedating of a document is forgery.—*Reg. v. Sookinoy Ghose*, 10 W.R. Crim. 23.

It must also be shown, either expressly or circumstantially, that the defendant made the false document. If it be in his handwriting, this may be proved by some person who has a knowledge of it, from having seen him write—see *Garrels v. Alexander*, 4 Esp. 37; even once only—*Willman v. Worrall*, 8 C. and P. 380; *Warren v. Anderson*, 8 Scott, 384; or his surname only—*Lewis v. Sapio*, M. and M. 39; or from having been in the habit of corresponding with him—*Gould v. Jones*, 1 W. Bl. 384; *Harrington v. Fry*, Ry. and M. 90; or acting upon his correspondence with others—*R. v. Slaney*, 5 C. and P. 213. A conviction for forgery cannot be had unless it be proved that the accused *himself* made a document or part of a document with the intention of causing it to be believed that such document or part of a document was made by the authority of a person, by whose authority it was not made. It is not sufficient that he should instruct another person to do it in his presence.—*Reg. v. Ramgopal Dhur*, 10 W.R. Crim. 7. Under the third clause of Sect. 464, however, a person may make a false document under certain circumstances by the hands of another party, if that party be the person who legally ought to execute or alter a document. If the charge be brought under the last part of that clause, it must be proved that the accused actually practised deception so as to prevent the person signing from knowing the nature of the document, and the mere belief that a paper was placed among a number of others for signature is not sufficient.—*Reg. v. Nujeebutollah*, 9 W.R. Crim. 20.

The false document must be made “with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with any property, or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed.” It is, however, not necessary to prove that any person was actually defrauded by the forgery—*R. v. Crooke*, 2 Str. 901; *R. v. Groate*, 1 Ld. Raym, 737; if from the evidence the intention to defraud can be inferred, even although, from circumstances of which he was not aware, it was impossible for the defendant to have defrauded the prosecutor—*R. v. Holden*, R. and R. 154; *Reg. v. Marcus*, 2 C. and K. 356; *Reg.*

*v. Hoatson*, *id.* 777 ; or though the party to whom the document is altered believe that the accused did not intend to defraud him—*R. v. Sheppard* R. and R. 169 ; see *R. v. Harvey*, 2 B. and C. 261, and *Rex v. Mazagora*, there quoted ; nay, even, as it seems, though in fact no person could have been defrauded by the forged instrument—see the *dictum* of Maule, J., in *Reg. v. Nash*, 2 Den. C.C. 499, 503. Where a forged bill of exchange, payable to the order of the defendant, was given as a pledge only, but to obtain credit, it was held to have been given with a fraudulent intent.—*R. v. Birkett*, R. and R. 86. A forged cheque drawn on the Worcester Old Bank was presented by the defendant to Ruffurd's Bank at Stourbridge, and refused ; and upon an indictment for forging and uttering the cheque with intent to defraud the Messrs Ruffurd, it was objected, that, as it was not drawn upon them, it could not defraud them ; but Bosanquet, J., held that, as it was presented at their bank for payment, it was evidence of an intent to defraud them.—*R. v. Crowther*, 5 C. and P. 316. The fact that the prisoner has given guarantees to his bankers, to whom he paid a forged note, to a larger amount than the note, does not so completely negative an intent to defraud them as to withdraw the case from the consideration of the jury.—*R. v. James*, 7 C. and P. 153 ; see *Reg. v. Cooke*, 8 C. and P. 582. On an indictment for forging and uttering a bill, it appeared that the person whose name was used was informed of the existence of the bill at the time it passed into the prosecutor's hands, but did not repudiate it. The jury were directed by Byles, J., to acquit the prisoner, although the person whose name had been used was called as a witness, and denied having given any previous authority for the use of his name.—*Reg. v. Smith*, 3 F. and F. 504.

Under the English law, if a man forged a document, such as a diploma of the College of Surgeons, with intent only to induce the public generally, or particular persons, to believe that he is a member of that college, but has no intent of committing any particular fraud, or doing any specific wrong to any individual, he is not guilty of the offence of forgery.—*R. v. Hodgson*, 1 Dears. and B.C.C. 3. But he would be under the Penal Code, because he would do it with the intention of causing persons to enter into contracts with him.

It has been held that a fraudulent and dishonest using of an

altered document as genuine must be distinctly proved before the prisoner can be convicted.—Reg. v. Jaha Bux, 8 W.R. Crim. 81. But this decision cannot be supported on the sections.

The fact that a person was acquitted of a charge of forging pottah A is no bar to his being tried for forging pottah B, although the two pottahs were, save as regards the land to which they related, identical, and notwithstanding that both were in evidence on the trial for forging pottah A.—Reg. v. Dwarkanath Dutt, Calcutta H.C., 2 Madras Jurist, 134.

### *Forgery of a Record.*

**Sect. 466.** *Forgery of a Record of a Court of Justice, &c.*—Whoever forges a document, purporting to be a record or proceeding of or in a Court of Justice, or a Register of Birth, Baptism, Marriage, or Burial, or Register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Note.**—By Act vi. of 1864, Sect. 4, whipping may be added to the above as a punishment for a second offence.

*Triable by the Court of Session. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are not bailable.*

The false alteration of a police diary by a head constable is a forgery of a document made by a public servant in his public capacity.—Reg. v. Rughoo Barrick, 11 W.R. Crim. 36.

### *Forgery of a valuable Security, &c.*

**Sect. 467.** *Forgery of a valuable Security or a Will.*—Whoever forges a document which purports to be a valuable security, or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer a valuable security, or to receive the principal, interest, or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the

delivery of any moveable property or valuable security, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Note.**—By Act vi. of 1864, Sect. 4, whipping may be added to the above as a punishment for a second offence.

*Triable by the Court of Session. A warrant should issue in the first instance. Police officers may not arrest without a warrant, unless the valuable security forged be a promissory note of the Government of India. Defendants are not bailable.*

### *Charge.*

That you, the said A B, on or about the                      day of                      , at                      , did forge a certain document purporting to be a valuable security, to wit, a bill of exchange for one thousand Rupees, dated the                      day of                      , and payable three months after the date thereof, drawn by one John Smith upon and accepted by one Thomas Brown; and that you have thereby committed an offence punishable under Sect. 467 of the Indian Penal Code, and within, &c.

### *Evidence.*

The forgery and intent with which the false document is made must be proved as before. It must also be shown that the document comes within the provisions of the present section.

The term “valuable security” is defined by Sect. 30, *ante*, p. 27; and under that section it has been held that a settlement of an account in writing, although not signed by any person, is a valuable security.—*Reg. v. Kapalavaya Saraya*, 2 Madras H.C. Rep. 247.

“Will” is defined in Sect. 31. Forgery may be committed by the false making of the will of a living person—*R. v. Murphy*, 2 East, P.C. 949; *R. v. Sterling*, 1 Leach, 117; *R. v. Coogan*, *id.* 449; or of a non-existing person—*Reg. v. Avery*, 8 C. and P. 596. So, though it be signed by the wrong Christian name of the person whose will it purports to be—*R. v. Fitzgerald*, 1 Leach, 20.

A turnpike ticket is a receipt.—*Reg. v. Fitch*, and *Reg. v. Howley*, 9 Cox’s Crim. Cases, 160. So is a fictitious pass-book of a bank.—*Reg. v. Smith*, 31 L.J.N.S.M.C. 154.



*Forgery for the purpose of Cheating, &c.*

**Sect. 468.** *Forgery for the purpose of Cheating.*—Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Sect. 469.** *Forgery to harm Reputation.*—Whoever commits forgery, intending that the document forged shall harm the reputation of any party or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**Sect. 470.** *A Forged Document.*—A false document made wholly or in part by forgery is designated “a forged document.”

**Note.**—By Act vi. of 1864, Sect. 4, whipping may be added to the above as a punishment for second offence.

*Triable by the Court of Session.* A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable under Sect. 469 ; but not under Sect. 468.

*Using a Forged Document.*

**Sect. 471.** *Using a Forged Document.*—Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

**Note.**—Sect. 469, Criminal Procedure Code, determines what authority is required for prosecutions under this section.

*Triable by the Court of Session.* A warrant should issue in the first instance. Police officers may not arrest without a warrant, unless the forged document be a promissory note of the Government of India. Defendants are bailable, unless the forged document be a promissory note of the Government of India.

*Charge.*

That you, the said A B, on or about the                      day of                      ,  
at                      , fraudulently and dishonestly did use as genuine a  
certain forged document, to wit, a forged bill of exchange, &c., you,  
the said A B, well knowing (or having reason to believe), at the

time you so used it, that the said document was forged, and that you have thereby committed an offence punishable under Sect. 471 of the Indian Penal Code, and within, &c.

*Evidence.*

The forgery must first be proved. Sect. 470, p. 402, defines what is a forged document. Then it must be shown that the defendant used the forged document as a genuine one. The words used in the English statute for this offence are "offer, utter, dispose of, and put off." On these words Archbold says, p. 491, 15th edition:—"To *offer* and to *utter* mean nothing more than that the party tendered, or attempted to pass or make use of, the forged instrument, with the intent mentioned in the indictment: these words do not import that the person to whom the forged instrument was tendered actually accepted it with the intention to retain it, or was defrauded by it. Accordingly we find that the Legislature, wherever they intended that the offence should not be complete without an acceptance on the one part and a relinquishment on the other, have described the offence in words of a different appropriate meaning, such as 'pay and put off' (see 1 East, P.C. 179), or the like. The offence of uttering, which is described by the words 'offer, utter, dispose of, and put off,' includes attempts to make use of a forged instrument, as well as cases where the defendant has actually succeeded in making use of it. Where upon an indictment on the repealed statute 13 Geo. III. c. 79, which contained the words 'utter or publish,' it appeared that the defendant merely showed a forged instrument to a person, though with intent to raise a false idea of his substance, and afterwards left the instrument, under cover, in the custody of that person, as he pretended, for safe custody, it was holden not to be an uttering or publishing within these words.—*R. v. Shukard*, R. and R. 200."

The word "use" is rather more extensive, if anything, in its meaning, than those employed in the English statute, and certainly would include the foregoing case, if the forged instrument had been used for any dishonest purpose. It would also include the following cases: The showing of a forged receipt to a person with whom the defendant is claiming credit for it, which was held to be an offering or uttering, although he refused to part with the possession of it.—*Reg. v. Radford*, 1 Den. C.C. 59, 1 C. and K. 707. So where

a pawnbroker, upon the hearing of an application to compel him to deliver up goods which had been pledged with him (the money advanced, with interest, having been repaid) produced and delivered to the magistrates, through the hand of his attorney, a forged duplicate as the genuine one, which he had given when the goods were pledged, and which he had received back when the money was repaid, this was held to amount to an uttering by the pawnbroker.—Reg. v. Fitchie, 1 Dears. and B.C.C. 175. Where the defendant placed a forged receipt for poor-rates in the hands of the prosecutor, for the purpose of inspection only, in order, by representing himself as a person who had paid his poor-rates, fraudulently to induce the prosecutor to advance money to a third person, for whom the defendant proposed to be a surety for its repayment: this was held to be an offering.—Reg. v. Ion, 2 Den. C.C. 475. The presentation of a forged document for registration, and obtaining registration, is a using of that document.—Reg. v. Azimooddeen, 11 W.R. Crim. 15.

A conditional uttering is as much an uttering as any other. A person presented a forged acceptance to the manager of a bank at which he kept an account, saying he hoped that the bill would satisfy the bank as a security for the money he owed them, and the manager replied that that would depend on the result of inquiries, which they would have to make as to the acceptors: this was held to amount to a guilty uttering.—Reg. v. Cooke, 8 C. and P. 582.

The doctrine established by Shukard's case, *supra*, is, that, in order to constitute an uttering, the document should be parted with or tendered, or used in some way to get money or credit upon it; and the words "upon it" were, in Ion's case, *supra*, held to be equivalent to "by means of it." For "get money or credit" supply the terms used in Sect. 463, in defining forgery, and we have the limitation of the word use under the Indian Penal Code.

The fraudulent intent must be proved as in the case of forgery.

It is not necessary to prove that the defendant made the false document, it is sufficient that it was false to his knowledge.—Reg. v. Hemoruddi Mundul, 9 W.R. Crim. 22. The knowledge that the document is forged is not ordinarily capable of direct proof. It must in all cases be presumed by the court or jury from the circumstances adduced in evidence. Proof that the defendant has passed other forged documents of the same description, if proved

by legitimate evidence—*R. v. Millard*, R. and R. 245—raises a probable presumption that he knew the note, for the passing of which he is now indicted, to be forged—*R. v. Wylie*, 1 N.R. 92; *R. v. Tattersall*, *id.* 93; *R. v. Ball*, R. and R. 132; or that he had other forged notes of the same description in his possession—*R. v. Hough*, R. and R. 120; or, as it would seem, even of a different kind—*Bayley on Bills*, 450; and if, in addition to this, it be proved that the defendant, when he passed the notes, gave a false name or address, or passed by different names while uttering different forged bills—*Bayley on Bills*, 449—it amounts to a violent presumption of his guilty knowledge. Where a prisoner, who could neither read nor write, borrowed money and executed a bond, and afterwards repaid the money, receiving back what he believed to be that bond, which he afterwards filed in the Small Causes Court, in a suit in which he was defendant, and this bond was alleged to have been forged, it was held that there was no evidence of the prisoner's guilty knowledge.—*Reg. v. Bholay Pramanick*, 17 W.R. Crim. 32.

A person was charged under this section with fraudulently using as genuine a forged document, and having been tried by a jury and convicted, was sentenced by the Sessions Judge to ten years' transportation, in consequence of the judge considering that the document was of the nature of those specified in Sect. 467; but on appeal to the High Court, it was held that the charge should have distinctly set forth the offence as that of using a document of the nature of those specified in Sect. 467; otherwise, under the orders of Government, there was no jurisdiction to try the case by a jury, or having tried it, there was no jurisdiction to pass a sentence for using such a document.—*Reg. v. Gangaram Malji*, 6 Bombay H.C. Rep. C.C. 43.

In the cases of *R. v. Smith*, 2 C. and P. 633, and *R. v. Smith*, 4 C. and P. 411, it was ruled that if another uttering be made the subject of a separate indictment, it cannot be given in evidence to show a guilty knowledge. Archbold, however, p. 493, 15th edition, says: "In the case of *Reg. v. Cadwallar Lewis*, Carnarvon Sum. Ass. 1840, Lord Denman, C.J., said, that he could not conceive how the relevancy of the fact to this charge could be affected by its being the subject of another charge; and offered to admit the evidence, although the above cases were cited." In a subsequent case—*Reg. v. Acton*, 1 Russ. 407—*Alderson*, B., admitted such

evidence ; and in June 1867, in the case of *Reg. v. Zeigert*, 10 Cox Crim. Cases, 555, Willes, J., again admitted it.

*Making, &c., Counterfeit Seals, &c., for the purpose of Forgery.*

**Sect. 472.** *Making, &c., Counterfeit Seal, &c., to commit Forgery under Sect. 467.*—Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under Sect. 467, or with such intent has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Sect. 473.** *Making, &c., a Counterfeit Seal, &c., to commit a Forgery punishable otherwise.*—Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this chapter other than Sect. 467, or with such intent has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Note.**—*Triable by the Court of Session. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are not bailable.*

This offence is analogous to that of making dies for coining, see p. 208.

#### *Possession of Forged Document.*

**Sect. 474.** *Having Possession of a Forged Document, &c., with intent to use it.*—Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in Sect. 466, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ; and if the document is one of the description mentioned in Sect. 467, shall be punished with transportation for life, or with imprisonment of

either description for a term which may extend to seven years, and shall also be liable to fine.

**Note.**—*Triable by the Court of Session. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are not bailable.*

The charge, remarks, and evidence relative to the possession of counterfeit coin, p. 215, are applicable to this offence. Reference should also be made to the foregoing remarks on forgery on Sect. 471, and the use of forged documents. As to the intention to use a forged document, see *Reg. v. Hatim Moonshee*, 8 W.R. Crim. 11.

*Counterfeiting Device for Authentication.*

**Sect. 475.** *Counterfeiting a Device used for Authenticating Documents described in Sect. 467.*—Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document described in Sect. 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Sect. 476.** *Counterfeiting a Device for Authenticating Documents other than the foregoing.*—Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document other than the documents described in Sect. 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Note.**—Sect. 469 of the Criminal Procedure Code determines what authority is necessary for prosecution under Sects. 475 and 476.

*Triable by the Court of Session. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are not bailable.*

### *Evidence.*

In order to bring a case under Sect. 475, the document the accused has in his possession must have some counterfeit mark or device upon it, and it must be proved that the accused has the document in his possession for the purpose of using such device or mark for the purpose of giving the appearance of authenticity to the document, and the document must be one of those mentioned in Sect. 467.—*Reg. v. Rughoonundum Puttromwees*, 15 W.R. Crim. 19.

### *Destroying a Will, &c.*

**Sect. 477. *Fraudulent Destruction, &c., of a Will, &c.***—Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys, or defaces, or attempts to cancel, destroy, or deface, or secretes, or attempts to secrete, any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Note.**—*Triable by the Court of Session. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are not bailable.*

A document is a valuable security under this section, although not stamped, and so not receivable in evidence.—7 Mad. H.C. Rep., Ruling 26.

## TRADE AND PROPERTY MARKS.

### *Using False Trade or Property Mark.*

**Sect. 478. *Trade-mark.***—A mark used for denoting that goods have been made or manufactured by a particular person or at a

particular time or place, or that they are of a particular quality, is called a trade-mark.

**Sect. 479. *Property-mark.***—A mark used for denoting that moveable property belongs to a particular person, is called a property-mark.

**Sect. 480. *Using a False Trade-mark.***—Whoever marks any goods, or any case, package, or other receptacle containing goods, or uses any case, package, or other receptacle with any mark thereon, with the intention of causing it to be believed that the goods so marked, or any goods contained in any such case, package, or receptacle so marked, were made or manufactured by any person by whom they were not made or manufactured, or that they were made or manufactured at any time or place at which they were not made or manufactured, or that they are of a particular quality of which they are not, is said to use a false trade-mark.

**Sect. 481. *Using a False Property-mark.***—Whoever marks any moveable property or goods, or any case, package, or other receptacle containing moveable property or goods, or uses any case, package, or other receptacle having any mark thereon, with the intention of causing it to be believed that the property or goods so marked, or any property or goods contained in any case, package, or other receptacle so marked, belong to a person to whom they do not belong, is said to use a false property-mark.

**Sect. 482. *Punishment for Using a False Trade, &c.***—Whoever uses any false trade-mark or any false property-mark with intent to deceive or injure any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**Note.**—*Triable by a magistrate of the first or second class. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

### *Charge.*

That you, the said A B, on or about the                      day of                      , at                      , did use a certain false trade-mark, to wit, a mark purporting to denote that certain goods were made by Messrs Bass & Son, by whom they were not made, with intent to deceive (or injure) some person, and that you have thereby committed an offence punishable under Sect. 482 of the Indian Penal Code, and within, &c.



*Evidence.*

Prove that the mark is a trade or property mark, and that it is false, as defined in Sects. 480, 481. A trade or property mark is a mark used, that is, already in use, not one that is intended to be used, and one that is used in respect of some particular goods or person. "The word 'trade-mark' is the designation of marks or symbols applied to a vendible commodity."—*The Leather Cloth Company (Limited) v. the American Leather Cloth Company (Limited)*, 33 L.J.N.S. Ch. 201. In the same case it is also said by Westbury, L.C., "Property in a trade-mark is the right to the exclusive use of some mark, name, or symbol in connection with a particular manufacture, or vendible commodity; consequently, the use of the same mark in connection with a different article is not an infringement of such right of property. If, therefore, the trade-mark contains in itself a clear and distinct description of the commodity to which it is affixed, it is not pirated by the use of a mark which, although in other respects similar, does not contain or give the same description, and which is impressed upon an article which is not of the nature or quality so described."—*Id.* 201. See also *Hall v. Barrow*, *id.* 207, where it said that "the property in a trade-mark consists in the exclusive right to the use of that mark as applied to some particular manufacture." This doctrine was acted on in the case of *Maxwell v. Hogg*, 36 L.J.N.S. Ch. 433, where it was decided that the mere registration of the title of a magazine, and the announcement by advertisement that such a magazine was about to appear, but not followed by the actual issue thereof, was not sufficient to create a property in the title; and in this case the judgment of Willes, J., in *Lawson v. the Bank of London*, 25 L.J.N.S.C.P. 188, was referred to, and the following passage quoted with approval:—"No action could, I apprehend, be maintained for the sale of goods branded or stamped with another manufacturer's mark, which mark had never been put forward to the world by the party complaining of the misuser of it." To entitle a trader to relief against an illegal use of his trade-mark in the Court of Chancery, it is not necessary that the imitation should be so close as to deceive persons seeing the two marks side by side; but the degree of resemblance must be such that ordinary purchasers, proceeding with ordinary caution, are likely to be misled—*Seixo v. Provezende*, 1 L.R.

Ch. 192: and the actual physical resemblance of the two marks is not the sole question for the court; for if the plaintiff's goods have, from his trade-mark, become known in the market by a particular name, the adoption by the defendant of a mark or name which will cause his goods to bear the same name in the market is as much a violation of the plaintiff's rights as the actual copying of his mark—*ib.*; see also the explanation to Sect. 28 of the Penal Code. Although the defendant may have *some* title to the use of a name or mark, he will not be justified in adopting it if the probable effect of his so doing is to lead the public to suppose that in purchasing his goods they are purchasing those of the plaintiff—*Seixo v. Provezende, ubi sup.*; but where a person is selling an article in his own name, fraud must be shown to constitute a case for restraining him from so doing, on the ground that the name is one under which another has been selling a similar article; therefore, where a father had for many years exclusively sold a sauce under the title of "Burgess's" sauce, a court of equity refused to restrain his son from selling a similar article under that name, no fraud being proved—*Burgess v. Burgess*, 3 De G.M. and G. 896; and 22 L.J.N.S. Ch. 675.

In the English Merchandise Marks Act, 1862, it is provided that in order to constitute a trade-mark, the mark claimed must be lawfully used, and a question may possibly be raised whether trade-marks which contain false statements of a gross character are "lawfully used." A court of equity will not protect persons who have been in the habit of using such trade-marks by granting an injunction to restrain their piracy, on the ground that the plaintiff, to entitle himself to claim the intervention of a court of equity, must come into court with clean hands. In *Flavel v. Harrison*, 10 Hare, 467, the court refused to protect the use of the name "Flavel's Patent Kitchener," because it was shown to the court that no such article had ever been patented. So in *Pidding v. Howe*, 8 Sim. 477, the court refused an injunction, because false statements were made as to the preparation of tea called "Howqua's Mixture." In *Edelsten v. Vick*, 11 Hare, 78, and *Holloway v. Holloway*, 13 Beav. 209, however, statements, though not strictly true, were held, under particular circumstances, not to disentitle the plaintiffs to be protected by an injunction. In the Indian Penal Code, it is true, the words "lawfully used" do not occur; but

it may well be doubted whether a mark containing grossly false statements of quality, for instance, would be held to be a trade-mark, as indicating that the articles to which it was applied were "of a particular quality," and that a person imitating it would be liable to prosecution under these sections. Still, although a court of equity might not protect the plaintiff in the use of a particular trade-mark, there are cases in which that would afford no defence to a prosecution by the Crown for the same act.

These sections do not include false statements as to quantity. Fraud perpetrated by such means must be punished as cheating.

The intention of causing a false belief must be inferred from the circumstances of the case. A shopkeeper stamping the words "Mappin, Sheffield," on the blade of a common knife, can have no other intention than that of inducing the purchaser to believe that it was made by the person whose name it bore. There are cases, however, in which the proof of intention may not be so plain, and more distinct evidence on the subject must be given. Not only must there be an intention to cause a false belief in the mind of the person to whom the falsely-marked article is presented, but there must also be an intention of deceiving or injuring some one in the act of making use of the false trade-mark. The words "deceive or injure," in Sect. 482, must be read in connection with Sects. 43 and 44 of the Penal Code, which define the terms "injury" and "illegal."

The offence of using a false property-mark must apply to cases where the moveable property to which it is affixed is enhanced in value by the mere fact of its belonging to a particular person, in consequence of which the mark of ownership partakes somewhat of the nature of a trade-mark.

### *Counterfeiting Trade-marks.*

**Sect. 483.** *Counterfeiting a Trade-mark with intent to cause Damage.*—Whoever, with intent to cause damage or injury to the public or to any person, knowingly counterfeits any trade or property mark used by any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Sect. 484.** *Counterfeiting a Property-mark used by a Public Servant.*—Whoever, with intent to cause damage or injury to the

public, or to any person, knowingly counterfeits any property-mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person, or at a particular time or place, or that the same is of a particular quality, or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

*Note.*—*Offences under Sect. 483 are triable by a magistrate of the first or second class; those under Sect. 484, by the Court of Session, or a magistrate of the first class. A summons should issue in the first instance under Sect. 484; and a warrant under Sect. 483. Police officers may not arrest without a warrant. Defendants are bailable.*

The evidence under these sections will be similar to that under the sections relating to forgery.

#### *Making Die, &c.*

**Sect. 485.** *Fraudulent making, &c., any Die for counterfeiting any Trade-mark.*—Whoever makes or has in his possession any die, plate, or other instrument for the purpose of making or counterfeiting any public or private property or trade mark, with intent to use the same for the purpose of counterfeiting such mark, or has in his possession any such property or trade mark with intent that the same shall be used for the purpose of denoting that any goods or merchandise were made or manufactured by any particular person or firm by whom they were not made, or at a time or place at which they were not made, or that they are of a particular quality of which they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

*Note.*—*Triable by the Court of Session or magistrate of the first class. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

The charge and evidence under this section will be similar to those under the section relating to the making of a die for counterfeiting coin, see p. 208.

*Selling Goods with False Trade-mark.*

**Sect. 486.** *Knowingly selling Goods marked with a Counterfeit Property or Trade Mark.*—Whoever sells any goods with a counterfeit property or trade mark whether public or private, affixed to or impressed upon the same, or upon any case, wrapper, or receptacle in which such goods are packed or contained, knowing that such mark is forged or counterfeit, or that the same has been affixed to or impressed upon any goods or merchandise not manufactured or made by the person or at the time or place indicated by such mark, or that they are not of the quality indicated by such mark, with intent to deceive, injure, or damage any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**Note.**—*Triable by a magistrate of the first or second class. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

*Charge.*

That you, the said A B, on or about the                      day of                      , at                      , did sell certain goods, to wit, twelve reels of cotton, with a counterfeit trade-mark affixed to the wrapper in which such goods were contained, to wit, a mark purporting to indicate that the said goods were made by Taylor & Co., of Derby, knowing that such mark was forged and counterfeit, and that the same had been affixed to goods not manufactured by the person indicated by such mark, with intent to injure some person, to wit, one C D; and that you have thereby committed an offence punishable under Sect. 486 of the Indian Penal Code, and within, &c.

*Evidence.*

The sale must be proved first, and then the rest of the evidence will be similar to that of using a forged document; *ante*, p. 403.

*Making and using a False Mark.*

**Sect. 487.** *Fraudulently making a False Mark upon any Package or Receptacle containing Goods.*—Whoever fraudulently makes any false mark upon any package or receptacle containing goods, with intent to cause any public servant or any other person to believe that such package or receptacle contains goods which it does

not contain, or that it does not contain goods which it does contain, or that the goods contained in such package or receptacle are of a nature or quality different from the real nature or quality thereof, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Sect. 488.** *Punishment for making use of any such False Mark.*

—Whoever fraudulently makes use of any such false mark with the intent last aforesaid, knowing such mark to be false, shall be punished in the manner mentioned in the last preceding section.

**Note.**—*Triable by the Court of Session, or a magistrate of the first or second class. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

The offences under these sections are the same as those of counterfeiting a trade-mark and using a false trade-mark, with this exception, that the mark used is neither a trade nor a property mark, but one which is used simply for the purpose of conveying official intimation of certain facts respecting goods.

*Defacing a Property-mark.*

**Sect. 489.** *Defacing any Property-mark.* —Whoever removes, destroys, or defaces any property-mark, intending, or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**Note.**—*Triable by a magistrate of the first or second class. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

*Evidence.*

Prove the removal, destruction, or defacing of the property-mark by the defendant. Show also that it was done with the intent to injure some person. If the mark was affixed to property which belonged to the defendant, the presumption in most cases would be that he had a right to do what he liked with his own, but if the property was not his own, but only in his power for a short time, then the presumption would be, on the contrary, that he had a fraudulent intention in what he was doing.

## CHAPTER XIX.

## CRIMINAL BREACH OF CONTRACTS OF SERVICE.

IN the report of the Indian Law Commissioners, the following remarks upon this chapter are found :—"We agree with the great body of jurists in thinking that, in general, a mere breach of contract ought not to be an offence, but only the subject of a civil action. To this general rule there are, however, some exceptions. Some breaches of contract are very likely to cause evil such as no damages, or only very high damages, can repair, and are also very likely to be committed by persons from whom it is exceedingly improbable that any damages can be obtained. Such breaches of contract are, we conceive, proper subjects for penal legislation. In England, where the roads are secure, where the means of conveyance can easily be obtained, and damages sufficient to compensate for any inconvenience or expense which may have been suffered can easily be recovered, it would be unnecessary to provide a punishment for such breaches of contract as are made punishable by the 490th Section. But the mode of performing journeys, and the state of society in India, are widely different. It is often necessary for travellers of the upper classes, even for English ladies, ignorant perhaps of the native languages, and with young children at their breasts, to perform journeys of many miles over uninhabited wastes, and through jungles in which it is dangerous to linger for a moment, in palanquins borne by persons of the lowest class. If, as sometimes happens, those persons should in a solitary place set down the palanquin and run away, it is difficult to conceive a more distressing situation than that in which their employer would be left. None but very high damages would be any reparation for such a wrong. But the class of people by whom alone such a wrong is at all likely

to be committed can pay no damages. The whole property of the delinquents would probably not cover the expense of prosecuting them civilly. It therefore appears to us that breaches of contract of this description may, with strict propriety, be treated as crimes."

*Breach of Contract on a Journey.*

**Sect. 490.** *Breach of Contract of Service during a Journey.*—Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person or any property from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits to do so, except in the case of illness or ill-treatment, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine, which may extend to one hundred Rupees, or with both.

*Illustrations.*

- (a) A, a palanquin-bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.
- (b) A, a coolie, being bound by lawful contract to carry Z's baggage from one place to another, throws the baggage away. A has committed the offence defined in this section.
- (c) A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so. A has committed the offence defined in this section.
- (d) A by unlawful means compels B, a coolie, to carry his baggage. B, in the course of the journey, puts down the baggage and runs away. Here, as B was not lawfully bound to carry the baggage, he has not committed any offence.

*Explanation.*—It is not necessary to this offence that this contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is made with any person,



either expressly or impliedly, by the person who is to perform the service.

### *Illustration.*

A contracts with a Dâk Company to drive their carriage for a month. B employs the Dâk Company to convey him on a journey, and during the month the Company supplies B with a carriage which is driven by A. A in the course of the journey voluntarily leaves the carriage. Here, although A did not contract with B, A is guilty of an offence under this section.

**Note.**—*Triable by a magistrate of the first or second class. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

### *Charge.*

That you, the said A B, on or about the                      day of                      , at                      , being bound by lawful contract to render your personal service in conveying (or conducting) a certain person, to wit, C D (or certain property, to wit, —), from                      to                      , did voluntarily omit to do so, such voluntary omission not being justified by the illness of you, the said A B, or ill-treatment of you, the said A B, on the part of the said C D ; and that you have thereby committed an offence punishable under Sect. 490 of the Indian Penal Code, and within, &c.

### *Evidence.*

Under all these sections there must be proof of a lawful contract as alleged in the charge. It is not necessary that every term of the contract should have been expressly agreed upon, for the law will imply that the ordinary incidents of well-known classes of service were included when the general contract for that particular class of service was made ; but there must be enough of the contract proved to allow the court to draw the necessary inferences of fact. The contract must also be lawful—that is, for a lawful object. Thus a contract to convey stolen or smuggled goods from one place to another would not be lawful, and a person who made such a contract could not be punished under this section if he broke his

contract in the middle of the journey. So, too, seeing that every contract imports a consideration, it is necessary that the consideration should be a good consideration—that is, a lawful one—one which the law does not prohibit, for the courts will not enter into the sufficiency of the consideration, as that is a matter entirely to be determined between the employer and the employed; in fact, it is very probable that the court would only look to the voluntary engagement of the servant and the trust reposed in him by the master consequent thereupon, as that would be a sufficient contract—(see Chitty on Contracts, 8th edition, pp. 29-32)—and not go into the question of consideration, except for the purpose of seeing that it was not an unlawful one. There is no illustration appended to these sections of what a lawful contract is, and the only reference made to the lawfulness or unlawfulness of a contract is in illustration *d* to Sect. 490, which is a case in which there was no contract at all in existence.

A contract having been proved, the next thing is to show a breach thereof—*i.e.*, that the defendant voluntarily omitted to perform it. This may be either by an actual refusal in words, or by his absenting himself when required to carry out the contract. Except in one case, the time of the act constituting the breach is unimportant so long as it is after the making of the contract. It is immaterial whether the breach be by a non-commencement of the contract or by a cessation of it. It is equally a breach whether, having made a contract, the contractor does not come at the time specified to commence his work, or, having commenced it, he leaves off in the middle. The exception is, where no consideration is to pass from the employer to the employed, and there the work must have commenced: the employer must have actually reposed trust in the servant by committing to his care his own property or person, or the person whom the servant is to take charge of. “An action will not lie for *not* doing a thing where there is no consideration, such as reward, to uphold a promise to do it; yet, where there is a *delivery* of goods and chattels or moneys to a person who undertakes to do something respecting them even without any reward for his trouble, an action will lie on this bailment if there be a neglect in the management, by which the goods are spoiled or the like.”—Chitty on Contracts, 8th edition, p. 29; see also *Wheatly v. Low*, Cro. Jac. 667; *Shillibeer v. Glyn*, 2 M. and W. 143; and

Coggs v. Bernard, 2 Lord Raym. 909 ; and the notes thereto in the first volume of Smith's Leading Cases.

If the omission on the part of the servant to carry out his contract arose from an accident, or superior force, or mistake, or the fraud of a person other than himself, it would not be voluntary, and he would be relieved from criminal responsibility. In Sect. 492 the words "or without reasonable cause" are introduced. Doubtless this arose from the fact that the urgency was greater under these sections, and therefore no chance should be allowed to the servant to manufacture a "reasonable cause." A servant who, having made a contract to serve during a voyage, refused to go on board ship during a hurricane, his master being desirous of going, or one who refused to pass through or remain a reasonable time in a district where cholera was raging, would be liable. If, however, the master knew of the latter fact before he made the contract, and concealed it from the servant, it is a very great question whether the contract would not be entirely vitiated, and the servant be at liberty to go wherever he liked. A question might also arise, whether a servant would be liable who ran away on a journey on the approach of a tiger, unless the contract was expressly to guard as well as conduct, for self-preservation is the first law of nature ; and besides, the fact of the servant standing his ground might result in him being eaten up, and thus his master be permanently, instead of temporarily, deprived of his services. There could be no conviction under this or the following sections, if the defendant left his service under a *bonâ fide* belief that the law allowed him to do so ; but then it must be most distinctly shown that the omission was in pursuance of his supposed right, and not merely that he might possibly have acted under such a belief.—Willett v. Boote, 30 L.J.N.S.M.C. 6.

The words "during a voyage or journey" apply to the whole section, therefore a breach of a contract to carry indigo from the field to the vats is not punishable under this section.—2 R.C.C. Cr. 63. In conformity with this decision, the High Court at Calcutta have further ruled, that these words limit the offences created by this section to those committed against travellers. They therefore held that a contract to convey the complainant's coal from one named place to another, and also for two years to convey his coal generally from whence he pleased to where he pleased, the carter

not agreeing to convey, but to "cause" it to be conveyed, did not come within this section.—*Sage v. Nirunjun Chatterjee*, 5 R.C.C. Cr. 29, and 9 W.R. Crim. 12. Nor does it apply to servants hired by the month, and under a continuing implied contract to serve until the engagement is terminated by a month's notice.—Rulings of the Madras H.C., 1864, on Sect. 490.

The contract has been held in *Unwin v. Clarke*, 1 L.R.Q.B. 417, not to be terminated by conviction and punishment; but the contrary, however, appears to have been ruled in Bengal.—2 R.J. and P. 24.

*Breach of Contract to Attend on Helpless Persons.*

**Sect. 491.** *Breach of Contract to Attend on Helpless Persons.*—Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease, or of bodily infirmity, is helpless, or incapable of providing for his own safety, or of supplying his own wants, voluntarily omits to do so, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, which may extend to two hundred Rupees, or with both.

**Note.**—*Triable by a magistrate of the first or second class. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

*Evidence.*

The evidence under this section will be the same as that under the foregoing one, with the exception that the terms of the contract will be slightly varied. There are, however, no exceptions to the duty cast upon the servant of fulfilling his contract. While that is in force and the servant is physically able to perform it, it is incumbent on him to do so; and this severity, it will be seen, is absolutely necessary, if the character and condition of those intrusted to him is taken into consideration. If a servant is ill, and from that cause is unable to fulfil his contract, his omission is not voluntary, and he is therefore, in that case, not liable under the present section.

*Breach of Contract to Serve at a Distant Place.*

**Sect. 492.** *Breach of Contract to Serve at a Distant Place.*—Whoever, being bound by a lawful contract in writing to work for another person as an artificer, workman, or labourer, for a period of not more than three years, at any place within British India, to which by virtue of the contract he has been, or is to be, conveyed at the expense of such other, voluntarily deserts the service of that other during the continuance of his contract, or without reasonable cause refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both, unless the employer has ill-treated him or neglected to perform the contract on his part.

**Note.**—*Triable by a magistrate of the first or second class. A summons should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

*Charge.*

That you, the said A B, being bound by a lawful contract in writing to work for a certain other person, to wit, C D, as an artificer (*or workman, or labourer*) for a period of not more than three years, to wit, for two years, at a certain place within British India, to wit, Kurrachee, in the Presidency of Bombay, to which said place you, the said A B, by virtue of the said contract, have been (*or are to be*) conveyed at the expense of the said C D; during the continuance of the said contract, voluntarily did desert the service of the said C D (*or without reasonable cause did refuse to perform the service which you, the said A B, had, by the said contract, contracted to perform, such service being reasonable and proper service*); your employer, the said C D, not having ill-treated you, the said A B, and not having neglected to perform the contract on the part of him, the said C D; and that you, the said A B, have thereby committed an offence punishable under Sect. 492 of the Indian Penal Code, and within, &c.

*Evidence.*

A lawful contract in writing must be proved between the de-

fendant and some other person, to work for that other person as an artificer, workman, or labourer; and this contract must be lawful both at the place it is entered into, and lawful in India, the place where the punishment for its breach is sought to be enforced.

The word "workman," or "labourer," has received a construction in the case of *Riley v. Ward*, 2 Exch. 59, where Parke, B., says that these words are "applicable to those persons only who strictly contract as *labourers*—that is, to such as enter into a contract to employ their *personal* services, and to receive payment for that in *wages*."—*Id.*, p. 68. In this case, a person who took a contract to execute a certain cutting on a railway, at a certain sum per cubic yard, and employed several men under him to assist in doing the work, was held not to be a workman or labourer, although he did a portion of the work himself. This was upheld in the case of *Sharman v. Sanders*, 22 L.J.N.S.C.P. 87, where it was held that a man who contracted to load ironstone at so much a ton, but did not stipulate for his own personal labour, although he did, from time to time, work with the men he employed under him, was not an *artificer*. In that case, p. 89, Jervis, C.J., said: "An artificer must be a person who is to have the personal performance of some work for which he is to be paid wages, and this must be with reference to the original contract or obligation." These two cases in the Exchequer and Common Pleas were followed by one in the Queen's Bench, *Bowers v. Lovekin*, 25 L.J.N.S.Q.B. 371, where *butty* colliers engaged to get coal from a mine at so much a yard or ton, and bound to work personally in the mine, were held to be artificers, although they might employ other men under them. These were all upheld in the Exchequer Chamber, in the case of *Ingram v. Barnes*, 26 L.J.N.S.Q.B. 319, where the court held that the plaintiff, a man who entered into a contract to make bricks on the following terms, was not an artificer: The owner of the brick-field was to find clay and all materials, the plaintiff to find all the labour; the plaintiff was to make as many bricks as the other should require for the sum of 10s. 6d. per thousand, but he did not bind himself to work personally. Under the contract the plaintiff did part of the work himself, and employed others to do the rest.

The contract must not be for a longer term than three years, and must be to work at some place in British India. There is no

restriction as to the place where the contract is to be made; therefore, persons in England, or elsewhere out of India, contracting to work in India, will be liable under this section, if they break their contract after they have arrived in India, and during the continuance of the contract.

It must further be shown, and this will in general appear upon the face of the contract, that the employer has paid, or is to pay, the cost of conveying the workman to the place where the work is to be done. If he has paid that cost, the amount should be proved in evidence, to enable the court to inflict the proper fine. It may be noted here, that the word "expense," which occurs twice in this section, has not the same extent of meaning in both cases. When it is first used, it is evident that it refers either to what has been paid by the master, or to what may have to be paid by him, and simply means, that part of the agreement is to be that the master shall take the workman to the place where the work is to be performed free of all cost to the latter. In the second place, it can only come into operation when the servant has actually been carried to the scene of his labour at the cost of his master, as otherwise the latter will have incurred no expense whatever. It is therefore submitted, that if the servant voluntarily deserts the service, before he starts for, or refuses to go to, the place whither he has engaged to proceed, fine cannot be inflicted as a punishment, but only imprisonment, as the master cannot in this case prove that he has been put to any expense within the meaning of the section. The fine is intended as an alternative, or increased punishment, in cases where there is not only desertion, or refusal, but where that is aggravated by the fact that the defendant has caused the prosecutor to expend a large sum of money upon him without getting the return for which he stipulated.

The act or omission constituting the offence must be proved to have taken place after the time when the agreement was to come into operation, and before the time when it was to terminate, either originally, or by virtue of any extension contemplated in the agreement. A person who deserts the service through illness, which prevents him from attending to it, or through some *vis major* which keeps him away, does not desert voluntarily. What is reasonable cause for a refusal to perform the service which has been contracted for, must depend entirely upon the circumstances of each case;

though the section specifically names two causes—ill-treatment, and neglect on the part of the master to perform his part of the contract.

Whether the service required is reasonable and proper service must also be determined greatly from the contract, though it would appear from the words of the section that, if a man were to contract to perform unreasonable and improper service, he could not be punished for refusing to perform it, if he afterwards repented of his contract, and said he would not go on with it. But what would amount to such unreasonable and improper service remains to be seen.



## CHAPTER XX.

### OFFENCES RELATING TO MARRIAGE.

#### *Fraudulent Marriage Ceremony, &c.*

**Sect. 493.** *Cohabitation in consequence of a belief of Lawful Marriage.*—Every man who by deceit causes any woman, who is not lawfully married to him, to believe that she is lawfully married to him, and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

For Sect. 494, see p. 427.

**Sect. 496.** *Marriage Ceremony gone through with fraudulent intent without Lawful Marriage.*—Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

For Sect. 497, see p. 436.

**Note.**—*Triable by the Court of Session. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are not bailable.*

#### *Charge under Section 493.*

That you, the said A B, on or about the                      day of                      , at                      , by deceit, did cause a certain woman, to wit, C D, not lawfully married to you, to believe that she was lawfully married to you, and in that belief to cohabit (or have sexual intercourse) with you, the said A B; and that you, the said A B, have thereby committed an offence punishable under Sect. 493 of the Indian Penal Code, and within, &c.

*Evidence.*

The offences created in these two sections are very closely allied. The former almost supposes the previous existence of the latter. The distinction, however, between them consists in this: The offence created by Sect. 496 may be committed by a man or a woman, and does not require that one party should have been deceived by the other, nor that cohabitation or sexual intercourse should have followed the act of marriage. Under Sect. 493, the woman must have been deceived by the man, and, in consequence of that deception, have cohabited with him, or permitted him to have sexual intercourse with her.

The means by which the woman may be deceived are various. It may be by representing that when she was a child the defendant was lawfully married to her, or by him representing that he is a Mahomedan or a Hindoo, and then going through the Mahomedan or Hindoo form of marriage with a Mahomedan or Hindoo woman, as the case may be. Deceit of this, or of some other cognate nature, must be proved. The deceit must, however, go to the extent of inducing the woman to believe that she is lawfully married to the man.

It must then be proved that, in consequence of the deception, and in the belief implanted by it, the woman cohabited with the man, or allowed him to have sexual intercourse with her.

Under Sect. 496, not only must it be shown that a man and woman went through the ceremony of being married without thereby being legally married, but that must have been done dishonestly, or with a fraudulent intent, as in the case of a pretended lawful marriage to enable the parties to obtain property coming to one or both of them on marriage; or if a man, wishing to obtain money, jewels, or other property belonging to a woman, should deceive her into going through an invalid marriage ceremony, in order to obtain them, and then abstain from cohabiting with her.

The mere abuse of the marriage ceremony, whether of a religious character or not, is not an offence, where there is no deceit practised on the woman, and where there is no dishonest or fraudulent intention.

*Bigamy.*

**Sect. 494.** *Marrying again during the Lifetime of Husband or*

*Wife.*—Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

*Exception.*—This section does not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts, so far as the same are within his or her knowledge.

**Sect. 495.** *Same offence with Concealment of the former Marriage.*—Whoever commits the offence defined in the last preceding section, having concealed from the person with whom the subsequent marriage is contracted the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Note.*—*Triable by the Court of Session. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable under Sect. 494, but not under Sect. 495.*

#### *Charge.*

That you, the said A B, having a wife, to wit, one E B, living, on or about the                      day of                      , at                      , did marry one C D, such last-mentioned marriage being void by reason of its taking place during the lifetime of such wife, to wit, E B (having concealed from the said C D the fact of your said former marriage); and that you, the said A B, have thereby committed an offence punishable under Sect. 494 (495) of the Indian Penal Code, and within, &c.

#### *Evidence.*

The marriage between the defendant and E B must be proved. It is immaterial whether it be celebrated in a foreign country or

not—1 Hale, 692—so long as it is valid by virtue of some law which is recognised in the country where the second marriage is celebrated.

Wherever the marriage is celebrated it may be proved by eye-witnesses only, provided they depose to facts of which the court can take judicial notice as constituting a valid marriage. If celebrated in a foreign country, circumstances should be proved by those acquainted with the laws of that country from which a conclusion may be come to as to whether it is a valid marriage according to those laws. In England and other Christian countries, only those marriages are reckoned valid which are celebrated according to the general principles obtaining in Christian countries—viz., that a man should have but one wife, and a woman but one husband at once. On this subject Wilde, J.O., in *Hyde v. Hyde and Woodmansee*, 35 L.J.N.S.P and M. 57, says,—“I conceive that marriage, as understood in Christendom, may be defined as the voluntary union for life of one man and one woman, to the exclusion of all others;” and refused to take any notice of a marriage contracted among the Mormons, and cited as the only authority, independent of general principles, the case of *Ardaseer Cursetjee v. Perozeboye*, 10 Moo. P.C.C. 375, in which the Privy Council held that Parsee marriages were not within the force of a charter extending the jurisdiction of the ecclesiastical courts to her Majesty’s subjects in India, “so far as the circumstances and occasion of the said people shall admit and require.” In India, however, where there are a vast number of creeds, all of whom, to a certain extent, can claim the free exercise of their peculiar religions, judicial notice must be taken of the particular customs of each. See also *post*, p. 433, &c.

A valid marriage must, however, be proved—*per* Bailey, J., in *Smith v. Huson*, 1 Phillimore, 287; the law will not presume it, as in civil cases, in a case of bigamy—*id.* It is not, however, necessary to prove the registration of the marriage, the licence, the publication of the banns, or any other matter merely preliminary; the marriage may be proved by some person who was present and saw the ceremony performed.—*R. v. Allison*, R. and R. 109; *Reg. v. Manwaring*, 1 Dears. and B.C.C. 132.

Among Christians, proof that the ceremony was performed by a person appearing and officiating as a Christian priest, and that it

was understood by the parties to be the marriage ceremony, according to the rights and customs of the country in which it was celebrated, would be sufficient presumptive evidence of the marriage.—See *R. v. The Inhabitants of Brampton*, 10 East, 282, so as to throw upon the defendant the *onus* of impugning its validity. It has also been established by the case of *Reg. v. Millis*, 10 Cl. and Fin. 534, that by the common law of England a marriage between British Christian subjects, although celebrated according to the rites of the Church of England, is void, unless solemnised in the presence of a person in holy orders. It is also settled by a decision of the House of Lords, that a priest in holy orders cannot lawfully solemnise a marriage between *himself* and another person.—*Beamish v. Beamish*, 9 H.L. Cases, 274.

The prisoner's admission of a prior marriage, before a competent authority, is evidence that it was lawfully solemnised.—*Reg. v. Newton*, 2 M. and Rob. 503; *Reg. v. Simonsto*, 1 C. and K. 164. Where a man and woman were married in Ireland, with the ceremonies making a marriage of Roman Catholics valid, they declaring themselves to be Roman Catholics, it was holden that the man could not, on an indictment for bigamy, set up his alleged Protestantism to defeat such marriage.—*Reg. v. Orgill*, 9 C. and P. 80.

Proof of a first marriage which is voidable merely will support an indictment for bigamy.—3 Inst. 88. Thus, a marriage by a minor in Ireland, without consent, which by the Irish Marriage Act is voidable only within a year, will support a conviction for bigamy if the marriage be not vacated.—*R. v. Jacobs*, 2 Mood. C.C. 140. But it is otherwise if the marriage be not voidable merely, but void; as, for instance, if a woman marry A, and in the lifetime of A marry B, and after the death of A, and while B is alive, marry C, she cannot be indicted for bigamy in her marriage with C, because her marriage with B was a mere nullity.—1 Hale, 693. So the marriage of an idiot, or of a lunatic not in a lucid interval, is void, because he is deemed in law incapable of entering into such a contract.—1 Bl. Com. 438, 439. So, in England, if a boy under fourteen and a girl under twelve contract matrimony, it is void, unless both the wife and the husband consent to and confirm the marriage after they arrive at the age of consent.—Co. Lit. 79; see *R. v. Gordon*, R. and R. 48. The statute 5 and 6 Will. IV. c. 54, s. 2, makes all marriages within the prohibited degrees of consanguinity

or affinity (*i.e.*, all marriages which were at that time voidable in the ecclesiastical courts by reason of their being within the prohibited degrees) absolutely null and void to all intents and purposes. Since this statute, therefore, a marriage with the sister of a deceased wife is absolutely void—*Reg. v. St Giles-in-the-Fields*, *Reg. v. Chadwick*, 11 Q.B. 173; although solemnised abroad, between British subjects, in a country by the law of which such a marriage was valid—*Brook v. Brook*, 3 Smale and G. 481; for a natural-born English subject does not, by the acquisition even of a foreign domicile, shake off his allegiance to the Crown of England, but continues liable to be affected by the laws of England—*Deck v. Deck*, 29 L.J.N.S.P. and M. 129.

The prosecution must then prove the defendant's second marriage, for which purpose, after proof of the first marriage, the second wife is a competent witness. To make the defendant punishable under the Penal Code, the second marriage must have been contracted in India.—See Sect. 2.

This second marriage must be proved in the same manner as the first. It seems, however, that the offence will be complete though the defendant assume a fictitious name at the second marriage.—*R. v. Allison*, R. and R. 109. Where, upon an indictment for marrying Anna T, the defendant's first wife being alive, it appeared that her name was not Anna but Susanna; but the defendant wrote her name Anna in the note for the publication of banns, and signed the register in which she was so called; it was held that, although her name might not be Anna, he could not defend himself on the ground that he did not marry Anna T.—*R. v. Edwards*, R. and R. 283. So also, where the second wife was married by the name of Eliza Thick, which name she had assumed purposely when the banns were published, so that she might not be known to be the person she really was (her name being Eliza Brown), *Gurney, B.*, held it to be no answer to the charge.—*R. v. Penson*, 5 C. and P. 412. And even though the subsequent marriage would have been void for consanguinity or the like, the defendant is guilty of bigamy.—*R. v. Brown*, 1 C. and K. 144.

If the second marriage do not take place in India, and the offender be triable there, it must be proved that the offender was apprehended or in custody there. Where, the defendant being in custody in the county of W for larceny, a bill was preferred against him for

bigamy in another county, upon which he was detained by order of the court; it was held sufficient to warrant the trial in the county of W, because being in custody upon a criminal charge, he was liable to be tried where he was imprisoned.—*R. v. Gordon*, R. and R. 48.

*Evidence for the Defence.*

1. That the first marriage has been declared void or set aside by a court of competent jurisdiction. A divorce *a vinculo* for adultery in a court in Scotland, of persons married or domiciled in England, is not within this proviso; because no sentence or act of any foreign country or state can dissolve an English marriage *a vinculo*, in respect of persons domiciled in England.—*R. v. Lolley*, R. and R. 237; *Tollemache v. Tollemache*, 30 L.J.N.S.P. and M. 113. But the Divorce Court in England has jurisdiction to dissolve a marriage solemnised between foreigners in a foreign country, on the ground of the adultery of the wife committed abroad, if the husband at the time the adultery is committed, and at the time the petition is presented, is *bonâ fide* and permanently resident in England; although for the purpose of succession he may not have acquired an English domicile.—*Brodie v. Brodie*, 30 L.J.N.S.P. and M. 185. Although the terms of the exception are only “declared void,” it is submitted that those terms must include “set aside” and “dissolved;” or else it must be held that a person whose marriage has been dissolved has not a husband or wife living at the time of the second marriage.

2. That the former husband or wife at the time of the subsequent marriage has “been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time.” Where the defendant’s first wife had left him sixteen years, and it was proved by the second wife that she had known him for nine years living as a single man, and had never heard of the first wife, who, it appeared, had been living seventeen miles from where the defendant (a poor man) resided; he was held entitled to an acquittal under a similar proviso to the present.—*Reg. v. Jones*, C. and Mar. 614. On the trial of a woman for bigamy, whose first husband had been absent from her for more than seven years, the jury found that they had no evidence that, at the time of her second marriage, she knew that

he was alive; but that she had the means of acquiring knowledge of that fact, had she chosen to make use of them. It was held upon this finding the conviction could not be supported.—*Reg. v. Briggs*, 1 Dears. and B.C.C. 98. Where the prisoner was indicted for bigamy, and no evidence was given on either side as to the prisoner's knowledge that his wife was alive, but it was proved that they had separated by agreement in 1843, and in 1857 the prisoner produced her at a trial in which he was interested; it was held that it was a question for the jury whether there was an absence of knowledge on the part of the prisoner that his wife was alive in 1855, the date of the second marriage.—*Reg. v. Cross*, 1 F. and F. 510, *per* Cockburn, C.J.

In *Reg. v. Dane*, 1 F. and F. 323, while laying down the rule that it was for the jury to say whether the prisoner knew that his first wife was alive, Bramwell, B., questioned whether the prosecution need give any evidence upon it; and about the same time Willes, J., in *Reg. v. Merrett*, 1 F. and F. 309, said that that depended upon the particular facts of each case. After these were decided, a case was carried to the Court of Criminal Appeal, where, on an indictment for bigamy, it was proved that the prisoner and his wife had lived apart for seven years, and that the prisoner then married again. There was no evidence of the prisoner's knowledge of the existence of his first wife at the time he married again. The prisoner was convicted. It was there held that the burthen of proof that the prisoner did not know that his wife was alive at the time he contracted his second marriage was not on the prisoner, and the conviction was therefore quashed.—*Reg. v. Curgerwen*, 35 L.J.N.S.M.C. 58.

None of these circumstances, however, are of any avail as a defence, unless "the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of affairs, so far as the same are within his or her knowledge."

The two foregoing sections, however, only apply to cases where the second marriage is void, as taking place during the lifetime of the first wife. Therefore, where polygamy is not forbidden, a man cannot commit an offence under this section. Hence, a Hindoo man could not commit this offence, for although bigamy and polygamy are prohibited, except under certain special circum-



stances (Manu, ch. ix. vs. 80-82), yet that has been held to be directory only, and not mandatory.—*Per* Scotland, C.J., in *Verasvami Chetie v. Appasvami*, 1 Madras H.C. Rep. 378. Nor could a Mohammedan, unless perhaps, having four legal wives (Mac. M.L. 255), he married a fifth. But a Hindoo or Mohammedan female might commit this offence, as, although the law allows a plurality of wives, it does not permit more than one husband.—2 R.C.C. Cr. 48. However, among some of the Hill tribes, the *Todas* on the Neilgherries, for instance, the case is just the reverse, each woman being the wife of all the brothers of a family.

There appears, however, to be no mode by which a woman can so get rid of her husband as to be able to marry again, for Manu says (ch. ix. v. 46) :—“ Neither by sale nor desertion can a wife be released from her husband ; thus we fully acknowledge the law enacted of old by the Lord of creatures.” Therefore, in a recent case before the Bombay High Court, it was held that a custom of the Talapda Koli caste, that a woman should be permitted to leave the husband to whom she has been first married, and to contract a second marriage, *nátrá*, with another man in the lifetime, and without the consent of the first husband is invalid, as being entirely opposed to the spirit of the Hindoo law ; and that such second marriage was “ void, by reason of its taking place during the life of such husband,” and therefore punishable, as regards the woman, under Sect. 494 of the Penal Code ; and, as regards the man whom she attempted to marry, under Sect. 497.—*Reg. v. Karsan Goja* ; *Reg. v. Báí Rupa*, 2 Bombay H.C. Rep. 124. Further, a custom which authorises a woman to contract a *nátrá* marriage, without a divorce, on payment of a certain sum of money to the caste to which she belongs, has been held to be an immoral custom, and one which cannot be judicially recognised.—*Uji v. Hathi Lálu*, 7 Bombay H.C. Rep. A.C.J. 133. But in a Madras case, where a custom was set up as existing in Southern India, that a woman might divorce her husband for cause shown, such as impotence, drunkenness, or misconduct, and then marry again, the High Court confined itself to saying that the custom had not been made out.—*Karasoo Nachiar v. Government*, O.S. 62 of 1866 ; *Mayne's Penal Code*, 317, 5th edition. See also the cases cited under “ Adultery,” *post*, p. 441.

Some difficulties may, however, arise in cases where the prisoner

has changed from one religion to another. As where a man, once a Roman Catholic, had, during his assumed Christianity, married a woman according to the Christian form; and, afterwards becoming again a professing Hindoo, had married a Hindoo woman according to the Hindoo forms.—Madras H.C. Rulings, 8th November 1866, 3 Madras H.C. Rep. App. 7. In this case, the following judgments were delivered:—Holloway, J., said, “The Session Judge of Guntoor has, on a charge of bigamy, treated the prisoner as being still a Roman Catholic Christian, who has contracted a second marriage in such circumstances as would render the second marriage void during the existence of the former.

“It seems impossible to assume that a man is not equally free to go from Hinduism to Christianity, and, if he pleases, back from Christianity to Hinduism.

“If then he is a Hindoo, although there is the greatest doubt whether the primitive Hindoo law authorised polygamy, it is impossible, after the numerous decisions upon the subject, to say that a second marriage of a Hindoo is void, in consequence of a previous valid Hindoo marriage. It is manifest, therefore, that the second Hindoo marriage cannot be rendered void, in consequence of a previous marriage which the Hindoo law would not have recognised, it not having been performed with any reference to its provisions. The ceremony could not make it a Hindoo marriage, because that was not a Hindoo ceremony; and the consensual contract could not make it a Hindoo marriage, because the consent was not to such a union, but to a very different one.

“If again, as it seems to me impossible to do, the man is to be treated as still a Christian, the union entered into with the Hindoo woman would not in the view of any law governing Christian unions be considered a marriage at all.

“In either point of view it seems impossible, on the facts found, to say that the prisoner has within the meaning of the section contracted a marriage which is void, in consequence of the previous marriage. There is no evidence that it is void.”

Innes, J., said:—“Now that we have before us the record in this case, it seems to me that the conviction must be quashed unless it should appear clearly from the evidence that the second marriage was void, by reason of its taking place during the life of the first wife. And there seems to be nothing in the evidence to establish

the invalidity of the second marriage. The statute 9 Geo. IV. c. 74, s. 70, has only application to persons in India professing the Christian religion at the time of the second marriage, which the prisoner did not, and the operation of it, therefore, need not be considered.

“If, in becoming a Christian, a man took upon himself the obligation of monogamy—*i.e.*, if the Christian religion restricted him on his embracing it to one wife—then I should say if such person married while still a Christian, he could not afterwards throw off his obligations by a mere change of profession. But I do not think that a profession of Christianity, *ipso facto*, imposes any such obligation, although doubtless the tendency of Christianity is adverse to polygamy. Polygamy, as an offence, exists only by statute, and there is no statute applicable to this country, which makes polygamy an offence, with exception of the statute above referred to, and that, as before noticed, seems to apply to a second marriage, not by an apostate from Christianity to Hinduism, but by one still professing the Christian religion at the time of his second marriage. There was by statute, therefore, so far as I can see, no obligation imposed on the apostate to Hinduism to observe monogamy, and, therefore, nothing in the Statute Law which rendered void the second marriage, by reason of the first wife being alive.

“Then it does not appear to me that the Hindoo law could regard the second marriage as void, by reason of the wife of the first marriage being still alive, since the Hindoo law, in readmitting the prisoner to caste, would altogether ignore the *status* which he had just abandoned, together with all obligations contracted under it, and would not recognise anything as a marriage which was not entered upon by him as a Hindoo, and with Hindoo forms and ceremonies.”

In the converse case of a person already married becoming a Christian, and then marrying again, the criminality of the act would depend upon his previous religion. If he were originally a Mohammedan, his apostasy would dissolve the former matrimonial union, and therefore the second marriage would be valid.—Baillie, Dig. 203. But, if he had been a Hindoo, he could only re-marry lawfully on complying with the provisions of Act xxi. of 1866.

#### *Adultery.*

**Sect. 497. Adultery.**—Whoever has sexual intercourse with a

person who is, and whom he knows, or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case, the wife shall not be punishable as an abettor.

**Note.**—By Sect. 478, Criminal Procedure Code, a complaint of an offence under Sect. 497 of the Indian Penal Code shall not be instituted except by the husband of the woman, or by any person under whose care she was living at the time of the adultery.

**Note.**—*Triable by the Court of Session. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

### *Charge.*

That you, the said A B, on or about the                      day of                      , at                      , did commit adultery, to wit, by having sexual intercourse, not amounting to rape, with one C D, the wife of E D, without the consent or connivance of the said E D, knowing (or having reason to believe) that the said C D was the wife of another man, to wit, of the said E D; and that you, the said A B, have thereby committed an offence punishable under Sect. 497 of the Indian Penal Code, and within, &c.

### *Evidence.*

Prove that the woman is the wife of the prosecutor, *i.e.*, that she has been lawfully married to him. This will be proved in the same way as on a charge of bigamy, which see, *ante*, p. 428, &c.

It must then be proved that the defendant has had sexual intercourse with her; for this she is a competent witness, or the fact may be proved by independent evidence. If the woman be not a witness, it will very seldom happen that the intercourse can be proved directly, because it is very unlikely that such acts will be committed where others would be able to see them; and the fact that the unlawful connection takes place with the woman's consent, makes her also a party to the concealment of the offence, which is not the case in rape; circumstances must therefore be proved, from which the court will be obliged to infer the adultery. And

see *Reg. v. Madhub Chunder Giri Mohunt*, 21 W.R. Crim. 13. The court, however, will not require the fact of the connection to be proved with that strictness which is requisite in cases of rape or of forcible connection.—*Ruling of Westropp, J., April Sessions, Bombay, 1869.*

Mere opportunity to commit adultery is not sufficient.—*Harris v. Harris*, 2 Hagg. 379. There must be overt acts, or some proximate circumstances, which satisfy the legal conviction of the court that the criminal act has been committed.—*Williams v. Williams*, 1 Hagg. Con. 299; *Grant v. Grant*, 2 Curt. 57; *Harris v. Harris*, *supra*. The circumstances which will lead to such a conclusion cannot be laid down universally, because they may be infinitely diversified by the situation and character of the parties, the state of general manners, and other incidental circumstances, apparently slight and insignificant in themselves, but which may have most important bearings upon the particular case. The only general rule that can be laid down upon the subject is, that the circumstances must be such as would lead the guarded discretion of a reasonable and just man to the conclusion that the offence has been committed.—*Loveden v. Loveden*, 2 Hagg. Con. 2; *Stone v. Stone*, 1 Robert, 99; *Faussett v. Faussett*, 7 Notes of Cases, 95. Facts which, if isolated or detached, would not lead to a conclusion of crime, are not to be taken separately only, but collectively, since they mutually interpret each other. Gross indecorum, improper familiarities, with opportunities of privacy, advance to the footing of proximate acts are such isolated facts; and if the privacy be shown to be frequent, the court will infer the commission of crime.—*Burgess v. Burgess*, 2 Hagg. Con. 228. Where there is proof of attachment, criminal intention, and opportunity, the presumption is that adultery has been committed.—*Davidson v. Davidson*, 1 Deane, 132. The birth, maintenance, and acknowledgment of a child, are evidence of adultery.—*D'Aguilar v. D'Aguilar*, 1 Hagg. 777. If there is full proof of an important fact, such as the birth of a child, with impossibility of the husband's access, and the identity of the wife, the fact of the wife having committed adultery is sufficiently proved.—*Richardson v. Richardson*, 1 Hagg. 11. In these cases, however, strict proof of non-access on the part of the husband is required.—*Heathcote's Divorce Bill*, 1 Macq. H.L. Ca. 277. The law holds that the longest period of gestation is ten months, the

shortest period six lunar months.—*Routledge v. Carruthers*, 4 Dow. P.C. 395. If it be once shown that parties have been cohabiting in illicit connection, it must be presumed, if they are still living under the same roof, that the criminal intercourse still subsists, notwithstanding those living under the same roof may be unable to depose to that fact.—*Turton v. Turton*, 3 Hagg. 350.

The circumstance of a woman going to a brothel, furnishes conclusive proof of adultery; since it would be almost impossible for a woman to go to such a place but for a criminal purpose.—*Williams v. Williams*, 1 Hagg. Con. 203; *Loveden v. Loveden*, 2 Hagg. Con. 20; *Best v. Best*, 1 Add. 437. The visit of a married woman to a single man's lodging or house must be distinguished from her going to a brothel, as her visit may be for the purest and most innocent purpose, and cannot *per se* induce an inference of guilt.—*Williams v. Williams*, 1 Hagg. Con. 303. But such a visit, together with other circumstances, such as the windows being shut, and the production of letters which could not be explained, otherwise than by the guilt of the parties, has been held to be conclusive proof of adultery.—*Rickets v. Rickets*, 1 Hagg. Con. 303, *notis*.

In all these cases, however, not only must the guilt of the woman be proved, but it must be shown, inferentially at least, that the other guilty person is the defendant.

The adultery must not be by the consent or connivance of the husband. The negative may be proved by the oath of the husband himself. If the defendant wants to prove the contrary, he must cross-examine the prosecutor, and then call witnesses to prove such a state of circumstances as will show that the husband did either consent or connive.

Consent is a positive act, a positive permission to the paramour, on the part of the husband, to have connection with his wife.

Connivance is passive consent, a knowledge of and acquiescence in the conduct complained of—*Boulting v. Boulting*, 33 L.J.N.S.P. and M. 33; but to constitute connivance there must be something more than mere negligence, than mere inattention, than over-confidence, than dulness of apprehension, than mere indifference.—*Phillips v. Phillips*, 1 Roberts, 145; *Croft v. Croft*, 3 Hagg. 312; *Rix v. Rix*, *id.* 76. There must be an intention on his part that his wife should, or a knowledge that she was likely to, commit adultery. If such a state of things existed as would, in the apprehension of a

reasonable man, result in the wife's adultery, whether that state of things was produced by the connivance of the husband or independently of it, and if the husband, intending that the result of adultery should take place, did not interfere when he might have done so, to protect his own honour, he is guilty of connivance.—*Allen v. Allen and D'Arcy*, 30 L.J.N.S.P. and M. 4. A husband who gives a willing assent to an act of adultery by his wife, desiring that it shall be committed, or is cognisant that adultery will result from transactions which he approves of or consents to, is guilty of connivance, although he may take no active step towards procuring it to be committed, and may not be an accessory before the fact.—*Marris v. Marris and Burke*, 31 L.J.N.S.P. and M. 69; *Glennie v. Glennie and Bowles*, 32 L.J.N.S.P. and M. 17. And if a husband *wilfully* abstains from taking any steps to prevent an adulterous intercourse, which, from what passes before his eyes, he cannot but believe or reasonably suspect is likely to occur, is guilty of connivance, even though there be no corrupt intention on his part.—*Gipps v. Gipps and Hume*, in the House of Lords, 33 L.J.N.S.P. and M. 163. In *Calcutta*, in a case where the husband practically allowed his wife to commit adultery, *Phear, J.*, in delivering judgment, said: "The husband has been living in *Calcutta*, and has day after day seen his wife leading a life of immorality. He has seen her evening after evening passing up and down the same promenade as himself in the company of men, under whose protection he believed her to be living. He said he knew she must be living in adultery, because she had no other means of livelihood; but he never said that he had offered her any allowance, or given her any opportunity of return, except on one occasion, when he went into the green boat and asked her to come back to him. I know nothing of the circumstances under which she left his house, and it was only in answer to a question from me that he let fall a word as to this incident. He has had no recourse to the methods which lay open to him, even before this (Divorce) Act came into operation, to vindicate his honour, or mete out justice to the offenders, but has been content to stand by for fourteen years; and it is only when this Act gives him the personal advantage of a dissolution of marriage, as distinguished from a divorce *a mensâ et thoro*, that he comes into court. This sequence of facts leads me to the conclusion that there has been something

like connivance on his part at the course of life his wife has been leading.—*Roe v. Roe*, 3 Ben. L.R. Short Notes, 9. In the case of *Gipps v. Gipps and Hume*, *supra*, the husband had agreed to withdraw a suit for the dissolution of marriage in consideration of a sum of money to be paid to him by the co-respondent in lieu of costs and damages, but made no stipulation as to his wife's future conduct. The co-respondent did not fulfil his part of the agreement, and there being a further case of adultery between the same parties, the petitioner filed a second petition, at the hearing of which the adultery charged was proved; but the court held that the petitioner's conduct amounted to connivance at, or consent to, the wife's intercourse with the co-respondent.

As to the knowledge by the defendant that the woman was married, see p. 443. Where a prisoner, accused of adultery, sets up in defence a *nātrā* contracted with the woman with whom he is alleged to have committed adultery, in accordance with the custom of his caste, the question the court has to determine is, whether or not the accused *honestly believed*, at the time of *contracting* the *nātrā*, that the woman was not the wife of another man.—*Reg. v. Manohar Raiji*, 5 Bombay H.C. Rep. C.C. 17; *Reg. v. Balu Baghu*, and *Reg. v. Hasan Suleman*, *ib.* 19 n. See also *Uji v. Hathi Lalu*, *ante*, p. 434. There will also be the question as to whether the husband consented to, or acquiesced in, the *nātrā*.

The connection proved between the defendant and the woman must not amount to the offence of rape, as defined by Sect. 375, p. 310.

Although a man cannot be charged with adultery except by the husband of the woman with whom he commits adultery, yet he may be charged with, and convicted of, house-trespass with intent to commit adultery, without the husband himself making the charge, if there is no consent or connivance on the part of the latter—*Madras High Court Rulings*, 1st June 1868, 3 *Madras Jurist*, 285; but where the husband *refused* to make a charge of house-trespass with intent to commit adultery, and only charged the accused with house-trespass with intent to commit theft, which was disproved, the magistrate was held to be right in refusing to convict of the charge which the husband refused to make, although the accused said he was there for the purpose of carrying on an intrigue with the wife.—5 *Madras H.C. Rep. App.* 5.



*Enticing away a Married Woman.*

**Sect. 498.** *Enticing away a Married Woman.*—Whoever takes or entices away any woman who is, and whom he knows, or has reason to believe to be, the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Note.**—By Sect. 479, Criminal Procedure Code, a charge of an offence under Sect. 498 of the Indian Penal Code shall not be instituted, except by the husband of the woman, or by the person having care of such woman on behalf of her husband.

*Triable by a magistrate of the first or second class. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

*Charge.*

That you, the said A B, on or about the                      day of                      , at                      , did take (*or entice*) away a certain woman, to wit, C D, the wife of E D, whom you knew (*or had reason to believe*) to be the wife of another man, to wit, the said E D, from the said E D (*or from the care of G H, who had the care of the said C D on behalf of the said E D*), with intent that the said C D should have connection with some man; and that you, the said A B, have thereby committed an offence punishable under Sect. 498 of the Indian Penal Code, and within, &c.

*Evidence.*

To support a charge under this section it must be proved that the woman is married, and the fact that she has been, before the charge, living with another man as his wife, will be sufficient to raise the presumption of her being his wife, so as to throw upon the defendant the burden of proving the contrary.—*Reg. v. Wuzeerat*, 17 W.R. Crim. 5; and *Reg. v. Wazira*, 8 B.L.R., App. 63. Of course, if to this fact there is added the testimony of the man and

woman, that they are legally married, the presumption is changed into proof.—*Id.* It must then be shown that this was known to the defendant, or that he had reason to believe it. There does not appear to have been any direct ruling as to what would amount to such a knowledge, but in two cases of dissolution of marriage, the court refused to condemn the co-respondent in costs from the probable absence of such knowledge. In the first, it appeared that the respondent was a drunken woman, who had been separated from her husband a considerable time when she met the co-respondent, and there was nothing to show that the latter had the least knowledge as to who or what she was when he met her, except that she was disposed to become a prostitute.—*Priske v. Priske and Goldby*, 29 L.J.N.S.P. and M. 195. In the other case, the co-respondent was the landlord of a tavern near the petitioner's residence, and his intercourse with the respondent commenced about the beginning of 1862, and about the same time she was carrying on an adulterous intercourse with another man almost under her husband's nose. In the course of 1863, she took furnished lodgings in another part of the town, under an assumed name, and there carried on an adulterous intercourse with a third man. She was also in the habit of going out at night alone, when her husband was at home, and not returning until a late hour. The court said it appeared to be doubtful whether the co-respondent knew the respondent was a married woman, but suspected, although it was not very plainly made out, that he did know it. Under all the circumstances of the case, however, he was not condemned in costs.—*Manton v. Manton and Stevens*, 34 L.J.N.S.P. and M. 121.

It must also be proved that she has been taken or enticed away from her husband, or from some person who has had charge of her on behalf of her husband, and the taking of a woman away is an offence under this section, although the advances and solicitations have proceeded from the woman, and the prisoner has for some time refused to yield to her requests.—*Reg. v. Kumarasami*, 2 Madras H.C. Rep. 331. On this point see also the remarks on the kidnapping and abducting of women for criminal purposes, *ante*, p. 305. The word "enticing" implies some blandishment or coaxing. Where the man and woman are perfectly agreed, the act of a third party, who merely accompanies the woman from her

husband's house, amounts only to an abetment.—Rulings of Madras H.C., 1864, on Sect. 498. Under the present section, however, it is not necessary to prove the actual abduction, the mere concealment or detention is sufficient, and in this it differs from the previous sections referred to. Physical restraint, however, is not essential to "detention." The wife may be detained and her husband deprived of her society by allurements and blandishments.—Reg. v. Soondaree Doss Taven and another, 3 Madras Jurist, 186.

Where a procuress induced a married woman of twenty to leave her husband, and the facts showed that the wife "had made her deliberate choice, and was determined, of her own free will, to leave her husband and become a prostitute in Calcutta," the Bengal High Court held that the procuress could not be convicted of kidnapping under Sect. 366, *ante*, p. 304, but was guilty of enticing away a married woman under the present section, "for whatever the wife's secret inclinations were, she would have had no opportunity of carrying them out had not the prisoner interposed."—1 W.R. Cr. C. 45.

It is not necessary that a woman should be actually living with her husband, or with the person in whose charge she is on his behalf, provided that she be living somewhere with his consent. Thus, a conviction was maintained where the prisoner had eloped with a woman from a house in Calcutta, hired by her for her husband, who was absent in Assam. In this case the court said—"We cannot say as the Sessions Judge said, 'that a wife is always the property of her husband, whether he is absent or present;' but we think it clear that a wife living in her husband's house, or in a house hired by him for her occupation, and at his expense, is during his temporary absence living under his protection, so as to bring the case within the meaning of Sect. 498, provided, of course, that the defendant knew, or had reason to believe, that she was the wife of the man from whose protection he took her, or on whose behalf the person from whom he took her had charge of her, and also provided he took her with the intent specified in the Act. To hold otherwise would be to declare the worst cases of seduction not punishable under the Penal Code."—1 R.C.C. Cr. 45.

It must also be shown that the intention with which any one of

the foregoing acts is committed is, that the woman may have illicit sexual intercourse with some man, and it is immaterial whether the wife is a consenting party or not.

A finding on this section should state definitely on what part of the section the accused is guilty ; only when it is doubtful what is the exact offence of the accused proved, should a general finding in the words of the section be resorted to.—Reg. v. Mothoora Mohun Dass., 22 W.R. Crim. 72.

## CHAPTER XXI.

## DEFAMATION.

**Sect. 499. Defamation.**—Whoever, by words either spoken, or intended to be read, or by signs, or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person, is said, except in the cases hereafter excepted, to defame that person.

*Explanation 1.*—It may amount to imputation to impute anything to a deceased person, if the imputation would harm the reputation of that person, if living, and is intended to be hurtful to the feelings of the family or other near relatives.

*Explanation 2.*—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

*Explanation 3.*—An imputation in the form of an alternative, or expressed ironically, may amount to defamation.

*Explanation 4.*—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

*Illustrations.*

- (a) A says—"Z is an honest man; he never stole B's watch;" intending to cause it to be believed that Z did steal B's

watch. This is defamation, unless it fall within one of the Exceptions.

- (b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the Exceptions.
- (c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the Exceptions.

*First Exception. Imputation of any Truth for the Public Good.*—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

*Second Exception. Public Conduct of Public Servants.*—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

*Third Exception. Conduct of any Person touching any Public Question.*—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no farther.

#### *Illustration.*

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such a meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

*Fourth Exception. Publication of Reports of Proceedings of Courts of Justice.*—It is not defamation to publish a substantially true report of the proceedings of a court of justice, or of the result of any such proceedings.

*Explanation.*—A Justice of the Peace or other officer holding an inquiry in open court preliminary to a trial in court of justice, is a court within the meaning of the above section.

*Fifth Exception. Merits of a Case decided in a Court of Justice, &c.*—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a court of justice, or respecting the conduct of any person as a party, witness, or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no farther.

*Illustrations.*

- (a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this Exception if he says this in good faith; inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no farther.
- (b) But if A says—"I do not believe what Z asserted at that trial, because I know him to be a man without veracity;" A is not within this Exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's conduct as a witness.

*Sixth Exception. Merits of a Public Performance.*—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance and no farther.

*Explanation.*—A performance may be submitted to the judgments of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

*Illustrations.*

- (a) A person who publishes a book, submits that book to the judgment of the public.
- (b) A person who makes a speech in public submits that speech to the judgment of the public.
- (c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

- (d) A says of a book published by Z—"Z's book is foolish, Z must be a weak man. Z's book is indecent, Z must be a man of impure mind." A is within this exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no farther.
- (e) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine," A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

*Seventh Exception. Censure passed in good faith by a Person having lawful authority over another.*—It is not defamation in a person having over another any authority, either conferred by law, or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

*Illustrations.*

A Judge censuring in good faith the conduct of a witness, or an officer of the court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this Exception.

*Eighth Exception. Accusation preferred in good faith to a duly authorised Person.*—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

*Illustrations.*

If A in good faith accuses Z before a magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's mas-



ter; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this Exception.

*Ninth Exception. Imputation made in good faith by a Person for the protection of his Interests.* It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

*Illustrations.*

- (a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the Exception, if he has made this imputation on Z in good faith for the protection of his own interests.
- (b) A, a magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith and for the public good, A is within the Exception.

*Tenth Exception. Caution intended for the good of the Person to whom it is conveyed.*—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

**Sect. 500. Punishment for Defamation.**—Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

**Sect. 501. Printing Defamatory Matter.**—Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

**Sect. 502. Sale of Defamatory Matter.**—Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

*Note.*—*Triable by the Court of Session or magistrate of the first class. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

### *Charge.*

That you, the said A B, on or about the                      day of                      , at                      , defamed one C D, to wit, by writing and publishing concerning him, the said C D, the words and matters following (or by making and publishing concerning him, the said C D, a certain imputation in the words and to the effect following), that is to say (*here insert the defamatory matter*), intending to harm (or knowing, or having reason to believe that such imputation would harm) the reputation of the said C D; and that you, the said A B, have thereby committed an offence punishable under Sect. 500 of the Indian Penal Code, and within, &c.

### *Evidence.*

The Penal Code makes no distinction between written and spoken defamation.—*Reg. v. Mohunt Pursoram Doss*, 2 W.R. Crim. 36.

The offence must be proved to have been committed within the jurisdiction where the offender is being tried. In the case of libel, if a letter containing the libel reach the party to whom it is addressed in the proper jurisdiction—see *R. v. Johnson*, 7 East, 65,—even though addressed to him out of the jurisdiction—*R. v. Watson*, 1 Camp. 215; or even if a sealed letter, containing the libel, be put into the post-office in the proper jurisdiction—*R. v. Burdett*, 4 B. and Ald. 95,—it is a sufficient publication of the libel within that jurisdiction: in the last case, three out of four judges held, that if a man write and compose a libel in L, with intent to publish it, and afterwards publish it in M, he may be indicted in either jurisdiction.

Proof that the defamatory matter, if written in the defendant's handwriting, is said to be presumptive evidence of publication, so as to throw the *onus* of proving non-publication on him.—*R. v. Beare*, 1 Ld. Raym. 417; *Lamb's Case*, 9 Rep. 596; but a libel may be found under circumstances which preclude such presumption. The publication may also be by selling the libel, distributing it gratis, reading it to others (if he knew the tendency of it before),

or by sending it, and having it delivered to another person.—Bac. Abr. Libel, B. 2; 1 Hawk. c. 73, s. 11. Evidence of the libel having been purchased in a bookseller's shop, or at a newspaper office, of a servant there, in the course of business, will sustain a count charging the master with having published it.—Bac. Abr. Libel, B. 2; R. v. Almond, 5 Bur. 2686.

Printing a libel, unless qualified by circumstances, is said to be, *prima facie*, a publishing; for it must be delivered to the compositors and other subordinate workmen—Baldwin v. Elphinstone, 2 W. Bl. 1038; but this proposition is denied in Watts v. Fraser, 7 A. and E. 223. Indeed, the mechanical work of compositors, and the division of labour among them, almost preclude the presumption that any of them have obtained any knowledge of the sense of what they were composing. If the manuscript of the libel be proved to be in the handwriting of the defendant, and it be also proved to have been printed and published, this is evidence to go to the jury that it was published by the defendant, although there is no evidence to show that the printing and publishing were by the direction of the defendant.—R. v. Lovett, 9 C. and P. 462.

Where the libel has been printed by the directions of the defendant, and he has taken away some of the impressions, a copy of those left with the printer may be read in evidence.—Watson's Case, 2 Stark, N.P.C. 129. In order to show that the defendant had caused a libel to be inserted in a newspaper, a reporter to the paper was called, who proved that he had given a written statement to the editor, the contents of which had been communicated by the defendant for the purpose of publication, and that the newspaper produced contained the same, with the exception of one or two slight alterations, not affecting the sense; it was held that what the report published might be considered as published by the defendant, but that the newspaper could not be read in evidence without producing the written statement delivered by the reporter to the editor.—Adams v. Kelly, Ry. and Moo. N.P.C. 157.

A delivery of a newspaper, containing a libel, according to the provisions of the 38 Geo. III. c. 78, to the officer of the stamp-office, has been held a publication, though such delivery was directed by the statute, for the officer had an opportunity of reading the libel.—Amphlett's Case, 4 B. and C. 35; see also Cook v. Ward, 6 Bing. 408.

Where a man publishes a writing, which upon the face of it is untrue, the law presumes that he does so with such a malicious intention as would constitute an offence, and it is unnecessary to give any further proof of intent. Thus, in *Harvey's Case*, 2 B. and C. 257, Lord Tenterden, C.J., said: "If it be true that a malicious intention be necessary to render amenable to law a person who publishes defamatory matter, I say that unless that malicious intent may be inferred from the publication of the slander itself, in a case where no evidence is given to retort that inference, the reputation of all his Majesty's subjects, high and low, would be left without that protection which the law ought to extend to them." So in *Sir Francis Burdett's Case*, 4 B. and Ald. 95, Best, J., said: "I told the jury that the question, whether it (the libel) was published with the intention alleged in the information, was peculiarly for their consideration; but I added that the intention was to be collected from the paper itself, unless the import of the paper were explained by the mode of publication, or any other circumstance. I added that if it appeared that the contents of the paper were likely to excite sedition and disaffection, the defendant must be presumed to intend that which his act was likely to produce."

It may, however, happen, where the expressions are ambiguous, or the intentions of the defendant doubtful, that it is necessary to adduce evidence for the purpose of showing positively the motive which prompted the publication. Thus, where the occasion of the publication would, *prima facie*, justify the defendant, yet, if the libel be false and malicious, it is an offence; in such cases, positive evidence of malice must be given on the part of the prosecution to rebut the supposed justification. For this purpose any circumstances are admissible which may elucidate the transaction, and enable the jury rightly to conclude whether the defendant acted fairly and honestly, or *malâ fide* and vindictively for the purpose of causing evil consequences. With this end in view, in an action for libel contained in a weekly paper, evidence was allowed to be given of the sale of other papers, with the same title, at the same office, for the purpose of showing that the papers were sold deliberately, in the regular course of circulation, and vended in regular transmission for public perusal.—*Plunkett v. Cobbett*, 5 Esp. 136. So, where on the trial of an action for libel contained in a news-

paper, subsequent publications by the defendant in the same paper were tendered in evidence to show *quo animo* the defendant published the libel in question, Lord Ellenborough said that doubtless they would be admissible in the case of an indictment.—*Stuart v. Lovell*, 2 Stark, N.P.C. 93. So also, in the trial of an action against the editor of a monthly publication for a libel contained in it, articles published from month to month alluding to the action, and attacking the plaintiff, are admissible to show the intent with which the libel was published, and also that it was published concerning the plaintiff.—*Chubb v. Westley*, 6 C. and P. 436. Lord Ellenborough also held that any words or acts of the defendant are admissible to show his intent in making use of the words which form the basis of the action—*Rustel v. Macquister*, 1 Camp. 49; and either the prosecutor or the defendant is entitled to read extracts from different parts of the paper or book containing libel relating to the same subject—*Rex v. Lambert and Perry*, 2 Camp. 398. So also, where the publication is *prima facie* excusable, on account of its cause, as in the case of servants' characters, or confidential advice, or communications to persons who ask it, or have a right to expect it, malice in fact must be proved.—*Per Bayley, J.*, in *Bromage v. Prosser*, 4 B. and C. 256. The same doctrine is laid down in the case of *M'Pherson v. Daniels*, 10 B. and C. 272; and *Parke, B.*, in *Wright v. Woodgate*, Tyr. and G. 15, said: "Where a man has a right to make a communication, you must either show malice intrinsically from the language of the letter, or prove express malice." The *gornastah* of a *gooroo* was convicted of defamation in having published an order of his master, excommunicating the complainant from his caste. The letter publishing the excommunication contained a statement that the complainant disobeyed some one, and treated him with disrespect. It was held that the letter contained no expression defamatory *per se*. If the person so treated was in a position entitling him to demand respect, and to make non-submission an offence, then that position would render the communication privileged; and if not, then the mere statement that the complainant did not obey one whom he was not bound to obey was not defamatory.—6 Madras H.C. Rep. App. 46.

But in all cases where the matter is defamatory in its nature, the *onus* of proving the truth of the statement, or, at least, that he had reasonable ground for believing it to be true, and was actuated in

making such statement, not by malicious motives, but by intelligent zeal for the public interest, lies on the person making the statement.—*Allaf Hossein v. Tasud-dook Hossein and others*, 2 North-West Prov. H.C. Rep. Civ. App. 87; *Reg. v. Nobin Dome*, 2 W.R. Crim. 35.

A false accusation not made in good faith renders the party making it liable to be charged with defamation.—*Reg. v. Nobin Dome*, *ubi sup.*

Under the Ninth Exception to Sect. 499, it has been held in Bengal that a charge will lie against a person for defamatory expressions used by him against his prosecutor, while he was a defendant in a criminal case, when those expressions were not used with due care and attention.—5 R.J. and P. 42.

As none of the exceptions to Sect. 499 are in any way connected with the sections imposing a punishment for defamation, they need not be noticed or negatived in the charge; but if the defendant relies upon any one or more of them to show that he is not guilty of the offence with which he is charged, he must prove the facts which indicate that his act comes within the limits of some of the exceptions.

The explanation to Exception 4 alters the law as it is in England, where it has been decided that the publication of preliminary or *ex parte* proceedings in a court of justice cannot be justified; as the publication of depositions before a Justice of the Peace on a charge of murder—*Lee's Case*, 5 Esp. 123; or the proceedings of a Coroner's inquest—*Fleet's Case*, 1 B. and A. 379. It is doubtful, too, even under this exception, to what extent the publication of a report of proceedings in a court of justice may extend. Suppose a charge of publishing a defamatory libel be dismissed. The case itself may be reported, but would the publication of the defamatory words be privileged? In England, on showing cause against a rule for a criminal information, for publishing a blasphemous and seditious libel, it was urged that it was merely the report of a judicial proceeding; yet the court held that if the statement contained anything blasphemous, seditious, indecent, or defamatory, the defendant had no right to publish it, although it had actually taken place in a court of justice.—*Carlile's Case*, 3 B. and Ald. 167.

## CHAPTER XXII.

### CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

#### *Criminal Intimidation.*

**Sect. 503. *Criminal Intimidation.***—Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which that person is not legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

*Explanation.*—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

#### *Illustration.*

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

**Note.**—For Sect. 504, see p. 458.

**Sect. 506. *Punishment for Criminal Intimidation.***—Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

**Sect. 507.** *Criminal Intimidation by an anonymous communication.*—Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

**Note.**—For Sect. 508, see p. 460.

*Offences under the first portion of Sect. 506, are triable by a magistrate of the first or second class; those under the latter portion of Sect. 506, and those under Sect. 507, by the Court of Session or magistrate of the first class. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

*Charge.*

That you, the said A B, on or about the                      day of                      , at                      , did commit criminal intimidation, to wit, by threatening another person, to wit, one C D, with injury to his person, to wit, with grievous hurt, with intent to cause alarm to the said C D (*or to cause the said C D to do a certain act which he, the said C D was not legally entitled to do, to wit, to desist from prosecuting a civil suit in which the said C D was plaintiff and one E F defendant, as the means of avoiding the execution of such threat*); and that you, the said A B, have thereby committed an offence punishable under Sect. 506 of the Indian Penal Code, and within, &c.

*Evidence.*

Prove the threat made by the defendant, and show with what intent the threat is uttered. The proof of these matters will be very similar to that of the same in extortion, see p. 331, and defamation, see p. 451. The difference between this present crime and the others is in the intent.

In Sect. 503 are found the words, “to cause that person to do any act which that person is not legally entitled to do.” It is evident from the whole of the context, and from the illustration given to the section, that the words “legally entitled to do” must be interpreted as “legally compellable to do” in order to give the section its full effect. The same expression is made use of in Sect. 508,



see p. 460 ; but in its ordinary sense, as the word "not" is omitted there.

Where the accused went to the complainant, the brother of an adult woman, and told him that he had come from the *Sirkar*, and would get him six months imprisonment if he did not let his sister go ; it was held that these words did not constitute either the offence of criminal intimidation within the meaning of Sect. 503 (there having been no threat of *injury* in the sense in which that word is used in the Code) ; or any other offence known to the law.—*Reg. v. Moroba Bhaskerjee*, 8 Bombay H.C. Rep. C.C. 101.

A person, who at one and the same time criminally intimidates three different persons, and each of them brings a separate charge against him, may be convicted and sentenced for three separate offences.—*Reg. v. Goolzar Khan*, 9 W.R. Crim. 30.

*Insult tending to Breach of the Peace.*

**Sect. 504.** *Intentional Insult with intent to provoke a Breach of the Peace.*—Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Note.**—*Triable by any magistrate. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

*Seditious Statement.*

**Sect. 505.** *Circulating False Report, with intent to cause Mutiny, or an Offence against the State, &c.*—Whoever circulates or publishes any statement, rumour, or report which he knows to be false, with intent to cause any officer, soldier, or sailor in the Army or Navy of the Queen to mutiny, or with intent to cause fear or alarm to the public, and thereby to induce any person to commit an offence against the State or against the public tranquillity, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Note.**—For Sect. 506, see p. 456.

*Triable by a magistrate of the first or second class. A warrant*

*should issue in the first instance. Police officers may not arrest without a warrant. Defendants are not bailable.*

### *Charge.*

That you, the said A B, on or about the            day of            , at            , did circulate (or publish) a certain statement (or rumour, or report), to wit (*here set out statement*), knowing the said statement, &c., to be false, with intent thereby to cause fear to the public, and thereby to induce some person to commit an offence against the public tranquillity, that is the offence of rioting, and that you have thereby committed an offence punishable under Sect. 505 of the Indian Penal Code, and within, &c.

### *Evidence.*

The evidence necessary to prove this offence will be the same as that required under defamation. In fact, the libel in the former case is defamatory, in the present seditious. Then what amounts to sedition? According to Archbold, political writings and words may be classed under three heads: those which are overt acts of treason—those which are seditious—and those which are allowable and justifiable. Writings which import a compassing of the Queen's death are sufficient acts of this species of treason, if published—1 Hale 118, 3 Inst. 14; Fost. 198,—as, for instance, writings exciting persons to kill the Queen—*R. v. Twyn*. Kel. 22—or the like. See the several cases collected in *Pyne's Case*, Cro. Car. 117. So, words of advice or persuasion are sufficient overt acts of this species of treason, if they advise or persuade to an act which would itself, if committed, be a sufficient overt act.—Fost. 195, 200; *R. v. Charnock*, 4 St. Tr. 562, 2 Salk. 631. But loose words, which have no reference to any act or design, or which are not words of persuasion or advice, cannot be deemed overt acts of treason.—Fost. 200-205; *R. v. Thering*, 3 St. Tr. 79-90. On the other hand, a man may lawfully discuss and criticise the measures adopted by the Queen and her ministers for the government of the country, provided he do it fairly, temperately, with decency and respect, and without imputing to them any corrupt or improper motive.—*R. v. Lambert & Perry*, 2 Camp. 398. All political writings between these extremes may be deemed seditious, and, under the present section, those only which amount to treason, by the

English law, might be punished. As, for instance, if a man curse the Queen, wish her ill, give out scandalous stories about her (*R. v. Harvey*, 2 B. and C. 257), or do anything that may lower her in the esteem of her subjects, or may raise jealousies between her and her people, or if he deny the Queen's right to the throne in common and unadvised disavowal, all these are sedition.—4 Bl. Coun. 423. In *R. v. Tutchin*, 5 St. Tr. 532, Holt 424, Lord Holt said, that "if men shall not be called to account for possessing the people with an ill opinion of the Government, no government can subsist; nothing can be worse to any government than to endeavour to procure animosities as to the management of it; this has always been looked upon as a crime, and no government can be safe unless it be punished." And Lord Ellenborough, in *Reg. v. Cobbett* (Holt on Libel, 114; Stark on Libel, 522), said, "that if a publication be calculated to alienate the affections of the people, by bringing the Government into disesteem, whether the expedient resorted to be ridicule or obloquy, the writer, &c., is punishable. And, whether the defendant really intended by his publication to alienate the affections of the people from the Government or not, is immaterial; if the publication be calculated to have that effect, it is a seditious libel."—*R. v. Burdett*, 4 B. and Ald. 95; *R. v. Harvey*, *supra*.

Under this section, if the statement be true in fact, the defendant will be entitled to be acquitted, whatever might be the result of the publication, &c., and with whatever intent he might have published it, for the section requires that he should know it to be false, and does not introduce any qualification as to his not knowing it to be true, as in the case of false evidence.

*Threatening to make a person an object of Divine Displeasure.*

**SECT. 508.** *Act done to induce a Person to believe that he will be rendered an object of Divine displeasure.*—Whoever voluntarily causes, or attempts to cause, any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he, or any person in whom he is interested, will become, or will be rendered by some act of the offender, an object of Divine displeasure, if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause

him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

*Illustrations.*

- (a) A sits dhurna at Z's door with the intention of causing it to be believed that by so sitting he renders Z an object of Divine displeasure. A has committed the offence defined in this section.
- (b) A threatens Z that unless Z performs a certain act, A will kill one of A's own children, under such circumstances, that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

**Note.**—*Triable by a magistrate of the first or second class. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

*Charge.*

That you, the said A B, on or about the                      day of                      , at                      , voluntarily did cause (or attempt to cause) a certain other person, to wit, one C D, to do something which the said C D was not legally bound to do, to wit (*here set out act to be done*), by inducing (or attempting to induce) the said C D to believe that he, the said C D (or some person in whom he, the said C D, is interested) would become (or be rendered), by an act of the said A B, to wit (*here set out act*), an object of Divine displeasure, if he, the said C D, did not do the said act or thing which the said A B desired him, the said C D to do; and that you, the said A B, have thereby committed an offence punishable under Sect. 508 of the Indian Penal Code, and within, &c.

*Insulting the Modesty of a Woman.*

**Sect. 509.** *Word, &c., intended to insult the Modesty of a Woman.*—Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman, shall be punished with

simple imprisonment for a term which may extend to one year, or with fine, or with both.

*Note.*—*Triable by a magistrate of the first class. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

### *Evidence.*

The act done by the defendant must be proved. The intention of the offender must be presumed from the nature of the act. If the act be one which would naturally insult the modesty of a woman, then the defendant will be presumed to have done it with that intention, if he has done it to a woman whom he did not know to be immodest, for the law will, for the sake of morality, presume every woman to be modest until the contrary be clearly shown. And, even if the woman be immodest by profession or character, still an offence might be committed if the act were done in a public place, where even an immodest woman might be desirous of conducting herself decently.

The doctrine that "though the woman were virtuous, yet if under the circumstances of the case the man *bond fide* and reasonably believed that his advances would be well received, and would lead to ulterior results," there would be no offence, seems to be a dangerous doctrine, as, if allowed as a rule of law, it would leave women who, while perfectly modest, had been perhaps a little too free and open in their behaviour, entirely unprotected from the insults of any libertine who chose to try to seduce them.

As to outrages on the modesty of women, see Sect. 354.

### *Annoyance through Intoxication.*

**Sect. 510. Misconduct in Public by a Drunken Person.**—Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten Rupees, or with both.

*Note.*—*Triable by any magistrate. A warrant should issue in the first instance. Police officers may not arrest without a warrant. Defendants are bailable.*

## CHAPTER XXIII.

## ATTEMPTS TO COMMIT OFFENCES.

**Sect. 511.** *Attempts to commit Offences.*—Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence, for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

*Illustrations.*

- (a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.
- (b) A makes an attempt to pick the pocket of Z, by thrusting his hand into Z's pocket. A fails in the attempt, in consequence of Z having nothing in his pocket: A is guilty under this section.

**Note.**—*All the provisions as to place of trial, issue of a summons or warrant, arrest with or without a warrant, and bail, depend upon the provisions laid down for the actual commission of the offences themselves.*

*Charge.*

That you, the said A B, on or about the                      day of                      ,

at , did attempt to commit an offence punishable under the Indian Penal Code with imprisonment (*or* transportation), to wit, the offence of cheating [by falsely pretending to one C D that you, the said A B, were in the Civil Service of her Majesty the Queen in India, with intent thereby to deceive the said C D, and thereby dishonestly to induce him to deliver to you, the said A B, certain goods on credit, for which you, the said A B, did not mean to pay], and that you, the said A B, have thereby committed an offence punishable under Sects. 417 and 511 of the Indian Penal Code, and within, &c.

*Evidence.*

The requirements of this section are—the intent to commit an offence, and an act done towards the commission of the offence—Reg. *v.* Cassidy, 4 Bombay H.C. Rep. C.C. 23; and further, that the act should have been done in the attempt to commit the offence.—Reg. *v.* Doyal Bawri, 3 Ben. L.R.A. Cr. J. 57, *per* Mitter, J. In this latter case the prisoner was convicted of attempting to cause mischief by fire, knowing that he would thereby destroy a building used as a human dwelling, and Mitter, J., in his judgment, said: “The only fact proved against the prisoner is, that he was apprehended with a ball of rag containing a piece of lighted charcoal in his possession; but the fact is no more consistent with the intention of setting fire to a human dwelling than with that of setting fire to a stack of hay or to something else. There is not a particle of evidence to show that the prisoner intended to destroy any particular object by fire, and, in the absence of such evidence, it is impossible to say that he intended to destroy a building used as a human dwelling. . . . In order to support a conviction for attempting to commit an offence of the nature described in Sect. 511, it is not only necessary that the prisoner should have done an overt act ‘towards the commission of the offence,’ but that the act itself should have been done ‘*in the attempt*’ to commit it. The Sessions judge says that the very fact that the prisoner went out of his house with the ball which was found in his possession was an overt act ‘towards the commission of the offence;’ but the question is, was there any attempt to commit a particular offence, and if so, was the act done ‘in such attempt.’ I am of opinion that both these questions ought to be answered in the negative.

Suppose a man goes out of his house into the street with a loaded gun in his possession, and suppose even that there is evidence to show that he did so with the intention of shooting Z. If Z is not found in the street, or when found, no attempt is made to shoot him, either from fear, or repentance, or from any other cause, can it be said that the man is guilty of attempting to shoot Z? The going out of one's house with a loaded gun, and with the intention of shooting a particular individual, might be in one sense considered an act done towards the shooting of that individual; but so long as nothing further is done—so long as there is no attempt to shoot him, and no overt act done '*in such attempt*'—it is impossible to hold that there has been an attempt to murder. . . . The cases referred to in this passage (Russell on Crimes and Misdemeanours, by Greaves, vol. i. p. 84), when contrasted with the illustrations of Sect. 511, given in the Code, leave no doubt in my mind that the facts of the present case are wholly insufficient to support an indictment for attempting to commit mischief by fire."

In order to constitute the offence of attempting to murder under Sect. 307, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events; but under the present section it is otherwise. Therefore, where a prisoner presented an uncapped gun at E Q (believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger, it was held that he could not be convicted of an attempt to murder under Sect. 307, though he could be convicted under Sect. 511.—Reg. v. Cassidy, 4 Bombay H.C. Rep. C.C. 17.

As to what is "an act towards the commission of an offence," see the remarks on attempts to commit suicide, *ante*, p. 273.

An attempt to commit an offence punishable with whipping, is not so punishable.—2 R.J. and P. 272. Nor can a person who is convicted of an attempt to commit an offence under Chapter XII. or Chapter XVII. be subjected to extra punishment under Sect. 75, in consequence of a previous conviction under those chapters. This applies only to cases where both convictions have been punishable wholly under those chapters.—Reg. v. Moonesawmy, *per* Bittlestone, J., 1st Madras Sess., 1865.





**B O O K   I I .**

**CRIMINAL PROCEDURE CODE**

**(ACT X. OF 1872)**



# P A R T I.

## CHAPTER I.

### PRELIMINARY, REPEAL, LOCAL EXTENT, AND DEFINITIONS.

**Sect. 1. *Short Title—Local Extent—Commencement.***—This Act may be called “The Code of Criminal Procedure.” It extends to the whole of British India, but shall not, except as hereinafter provided, affect the procedure of High Courts or Police Magistrates in Presidency towns; and it shall come into force on the 1st day of September 1872.

**Sect. 2. *Repeal of Enactments—Saving of special procedure.***—The enactments mentioned in the first schedule hereto annexed are repealed to the extent specified in the 3d column of the said schedule. Wherever a special form of procedure is prescribed by any law, not expressly repealed in the first schedule to this Act, it shall not be deemed to have been impliedly repealed by reason of its being inconsistent with the provisions of this Code.

***References to Code of Criminal Procedure.***—In every Act passed before this Act, in which reference is made to the Code of Criminal Procedure, such reference shall be taken to be made to this Act.\*

***Former Designations of Magistrates.***—In every Act passed before this Act, the expressions “officer exercising the powers of a Magistrate,” “Subordinate Magistrate, first class,” and “Subordinate Magistrate, second class,” shall, respectively, be deemed to mean

\* The numbers of those sections of will be found placed immediately after the old Criminal Procedure Code which those of this Code. are still retained in the present one

"Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class," as defined in this Act.

The cases in which the police may arrest without warrant or not, in the case of each offence under the Indian Penal Code or any other law referred to in Sect. 8 ; whether a warrant or a summons shall ordinarily issue in the first instance ; whether the offence is bailable or not, and the Court by which the offence is triable ; are indicated respectively by the 3d, 4th, 5th, and 7th columns of the fourth schedule hereto annexed.

*References to Sections of former Code.*—The references made in the Enactments specified in column 1 of the fifth schedule hereto, the sections of the former Code of Criminal Procedure specified in column 2 of the said schedule, shall be deemed to be made to sections of this Code directed in the 3d column of the said schedule to be substituted for the said sections in column.

Notifications published and orders made under any section of any Act hereby repealed, shall be deemed to have been published and made under the corresponding section of this Act.

**Nota.**—The words "The cases . . . hereto annexed," above, are added by Act xi. of 1874.

**Sect. 3. Pending Cases.**—Cases pending in any Criminal Court when this Act comes into force shall be decided as far as may be according to the procedure provided in this Act.

**Sect. 4. Definitions.**—In this Act the following words and expressions have the following meanings unless a different intention appears from the context :—

*Special Law.*—"Special law" means a law applicable to a particular subject.

*Local Law.*—"Local law" means a law applicable to a particular part of British India.

*Investigation.*—"Investigation" includes all the proceedings by the police, authorised by this Act, for the collection of evidence.

*Inquiry.*—"Inquiry" includes any inquiry which may be conducted by a magistrate or Court under this Act.

*Inquired into.*—"Inquired into" means and includes every proceeding preliminary to trial.

*Trial.*—"Trial" means the proceedings taken in Court after a charge has been drawn up, and includes the punishment of the

offender. It includes the proceedings under Chapters XVI. and XVIII. from the time when the accused appears in Court.

*Judicial Proceeding.*—"Judicial proceeding" means any proceeding in the course of which evidence is or may be taken, or in which any judgment, sentence, or final order is passed on recorded evidence.

*Written.*—"Written" includes "printed," "lithographed," "photographed," and "engraved."

*Criminal Court.*—"Criminal Court" means and includes every Judge or Magistrate, or body of Judges or Magistrates inquiring into or trying any criminal case or engaged in any judicial proceeding.

*Province.*—"Province" means the territories under the Government or Administration of any local Government.

*Presidency Town.*—"Presidency town" means the local limits of the ordinary criminal jurisdiction of the High Courts of Calcutta, Madras, or Bombay.

*High Court.*—"High Court" means, in reference to proceedings against European British subjects, or persons jointly charged with European British subjects, the High Courts of Calcutta, Madras, Bombay, the High Courts for the North-Western Provinces, and the Chief Court of the Panjáb.

In other cases "High Court" means the highest Court of criminal appeal or revision in any province.

*Session Case.*—"Session case" means and includes all cases specified in column 7 of the fourth schedule to this Act as cases triable by a Court of Session, and all cases which Magistrates commit to a Court of Session, although they might have tried them themselves. In the case of offences created by special and local laws, "Session case" means cases which are triable by the Court of Session, or which the Magistrate commits to the Court of Session, though he might have tried them himself.

*Magistrate's Case.*—"Magistrate's case" means and includes all cases specified in column 7 of the fourth schedule to this Act as cases triable by Magistrates, and all cases which Magistrates try themselves, although they might have committed them for trial to a Court of Session.

*Cognizable Offence or Case.*—"Cognizable offence or case" means an offence for or a case in which a police officer may, by any law in force for the time being, arrest without warrant.

*Non-cognisable Offence or Case.*—"Non-cognizable offence or case" means an offence for or a case in which a police officer may not arrest without warrant.

*Summons Case.*—"Summons case" means an offence of the class described in Sect. 148.

*Warrant Case.*—"Warrant case" means an offence of the class described in Sect. 149.

*Bailable Offence or Case.*—"Bailable offence or case" means an offence for or a case in which bail may be taken under the fourth schedule to this Act, or by any other law in force for the time being.

*Non-bailable Offence or Case.*—"Non-bailable offence or case" means an offence for or a case in which bail may not be taken under the fourth schedule to this Act, or by any law in force for the time being.

In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

In this Act, "section" means section of the Code of Criminal Procedure.

And all reference to the Code of Criminal Procedure made in Acts heretofore passed or hereafter to be passed shall be read as if made to such Code as amended by this Act.

*Note.*—The above words, "In every part . . . by this Act," are added by Act xi. of 1874.

To make a "session case," within the meaning of this section, it is not necessary that it should be triable exclusively by the Court of Session.—*R. v. Gulabdas Kuberda*, 11 Bomb. H.C.R. 98. In the judgment delivered in this case by Mr Justice West, it was said: "Section 435 of the Code of Criminal Procedure of 1861, as amended by Act VIII. of 1869, gave power to the Court of Session to order the commitment of an accused person discharged by the magistrate in case of an offence triable exclusively by that court, or by that court and the district magistrate; and there is nothing in the present code of procedure to indicate an intention to limit the authority of the Court of Session within narrower bounds."

## P A R T II.

### CONSTITUTION AND POWERS OF THE CRIMINAL COURTS.

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#### CHAPTER II.

##### OF CRIMINAL COURTS.

**Sect. 5. *Grades of Criminal Courts.***—Besides the High Courts there shall be four grades of Criminal Courts in British India—

- I. The Court of the Magistrate of the Third Class.
- II. The Court of the Magistrate of the Second Class.
- III. The Court of the Magistrate of the First Class.
- IV. The Court of Session.

**Sect. 6. *What Officers to hold Inquiries.***—All inquiries by Magistrates shall be held according to the provisions hereinafter contained.

**Sect. 7. *What Courts to try Offences.***—All Criminal trials in British India shall be held before the Courts specified in the fourth schedule to this Act, or before the Courts specified in any law by which the offence is created, according to the provisions hereinafter contained.

**Note.**—To this schedule the following explanatory notes are appended:—

*First,* The entries in the 2d and 6th columns of the schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely



as references to the subject of the section, the number of which is given in the 1st column.

*Second*, The term "whether bailable or not," in column 5, is to be taken in connection with the provisions of Sects. 388 and 389 of this Code.

*Third*, Offences may be tried by a Court superior to the Court specifically mentioned in column 7. For example, a Court of Session may try an offence entered in column 7 as triable by a magistrate.

*Fourth*, The words "any Magistrate" as used in column 7, shall include any Magistrate of the first, second, or third class.

*Fifth*, In the territories in British India to which the General Regulations of Bengal, Madras, and Bombay do not extend, the powers given by this Act shall be exercised by such officers as the Local Government of those territories respectively shall appoint.

*Sixth*, The last part of the schedule headed "Offences against other Laws" shall not be taken to alter or affect any special provision contained in such laws regarding the procedure to be followed in the case of offences made punishable thereby.

*Seventh*, The direction in column 4 is meant to indicate to magistrates the manner in which the discretion vested in them by Sects. 148, 149, and 150 is commonly to be used, but it is not to affect the definition of summons cases and warrant cases given in Sect. 4.

And see Sect. 50, by which the Local Government can empower magistrates to act together as a bench.

**Sect. 8.** *Offences under Local and Special Laws.*—Offences punishable under any law, other than the Indian Penal Code, containing no distinct provision as to the Court or Officer before which or before whom they are to be tried, may be inquired into and tried, according to the provisions hereinafter contained, by the Criminal Courts appointed under this Act. But no such Court shall award any sentence in excess of its powers. A Magistrate of the third class shall not try any such offence unless it is punishable with less than one year's imprisonment, nor shall a Magistrate of the second class try any such offence unless it is punishable with less than three years' imprisonment.

**Note.**—Under the corresponding section of the old Code it was held that a magistrate is bound to proceed in the investigation of cases under a special law according to all the provisions of the Code.

—*Reg. v. Abdool Aziz Khan*, 14 W.R. Crim. 36. This, of course, refers only where no special provision is made for the procedure to be adopted in such cases.

**Sect. 9.** *Appointment and Removal of Judges and Magistrates.*

—All Judges of Criminal Courts other than the High Courts, and Magistrates, shall be appointed and may be removed by the Local Government; but such officers as are now appointed or removed by the Government of India shall continue to be so appointed or removed.

**Sect. 10.** *Saving of Existing Incumbents.*—All existing Judges and Magistrates shall be deemed to have been appointed under this Act.

**Sect. 11.** *Inquiry and Trial in Case of European British Subjects.*—Offences committed by European British subjects shall be inquired into and tried according to the provisions of Chapter VII., and not otherwise; but the other provisions of this Act shall apply to all persons without distinction of race, unless a contrary intention is expressed.

## CHAPTER III.

## OF COURTS OF SESSION.

**Sect. 12. *Sessions Divisions.***—Every province shall be divided into Sessions Divisions.

**Sect. 13. *Power to alter Divisions.***—The Local Government shall have power to alter from time to time the number or extent of such divisions.

**Sect. 14. *Sessions Divisions.***—The existing local jurisdictions of Courts of Session shall be Sessions Divisions, unless and until they are so altered.

**Sect. 15. *One Court for each Division.***—There shall be a Court of Session in every Sessions Division.

It shall have power to try any offence and to pass upon any offender any sentence authorised by law, subject to the provisions of this Act.

**Sect. 16. *Appointment and Powers of Sessions Judges.***—There shall be a Sessions Judge for every Sessions Division. The Sessions Judge shall exercise all the powers of the Court of Session in his Sessions Division.

**Note.**—See Sect. 231.

**Sect. 17. *Appointment and Powers of Additional and Joint Sessions Judges.***—The Local Government may appoint additional Sessions Judges or Joint Sessions Judges, who shall exercise all the powers of a Court of Session in one or more Sessions Divisions in which they may be directed to act, but shall try such cases only as the Local Government directs them to try, or as the Sessions Judge of the division makes over to them for trial.

**Sect. 18. *Appointment and Powers of Assistant Sessions Judges.***—The Local Government may also appoint Assistant Sessions Judges, who shall exercise all the powers of a Court of Session in the Ses-

sions Division to which they may be attached, except the power of hearing appeals and of passing sentences of death, or transportation, or imprisonment for more than seven years, but they shall try those cases only which the Sessions Judge of the Sessions Division makes over to them either by general orders or by a special order.

Any sentence of more than three years' imprisonment passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge. The Sessions Judge may either confirm, modify, or annul such sentence of the Assistant Sessions Judge; or, if he think further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused person to be necessary, he may direct such inquiry or evidence to be made or taken.

**Note.**—The concluding words of this section from “or if he think” are added under Act xi. of 1874.

A sentence of an Assistant Sessions Judge, confirmed, under this section by the Sessions Judge, may be appealed to the High Court; and if a sentence of less than three years' imprisonment be passed by an Assistant Judge, the prisoner so sentenced may appeal to the Sessions Judge; Sect. 270, unless under the provisions of Sect. 273 there be no appeal. The Sect. (22) of the former Code, defining the powers of Assistant Sessions Judges in Bombay, empowered the Sessions Judge to confirm, amend (but not so as to enhance), or reverse the judgments of his assistants. Under those words it was held that the Sessions Judge had no power to quash the sentence of an Assistant Judge, and direct the lower Court to pass a new sentence, even supposing such sentence to have been illegal.—Reg. v. Murar Frikram, 5 Bombay H.C. Rep. C.C. 3. The proper course would have been for the Sessions Judge himself to have passed the proper sentence.

It has also been held that the alteration of a conviction for dacoity to one for robbery is not an amendment within the meaning of Sect. 22 of the old Act.—Reg. v. Joao Thomesit, 5 Bombay H.C. Rep. C.C. 22.

Sect. 280 gives power to the Sessions Judge sitting as a Court of appeal to enhance punishment, but no distinct authority is given to enhance in those cases which simply require his confirmation; he is to confirm, *modify*, or annul the sentences passed by his assistants, and the power of enhancement, if conferred at all, must be by the word “*modify*.”

## CHAPTER IV.

## OF MAGISTRATES AND THEIR POWERS.

**Sect. 19.** *Magistrates to be of Three Classes.*—Magistrates shall be either—

Magistrates of the First Class,  
Magistrates of the Second Class, or  
Magistrates of the Third Class.

**Sect. 20.** *Sentences which Magistrates may pass.*—The powers of Magistrates in respect to the trial of offences and to passing sentences on persons convicted of them are as follows:—

*First Class.*—Magistrates of the First Class may pass the following sentences:—

Imprisonment not exceeding the term of two years (including such solitary confinement as is authorised by law);

Fine to the extent of one thousand rupees;

Whipping.

*Second Class.*—Magistrates of the Second Class may pass the following sentences:—

Imprisonment not exceeding six months (including such solitary confinement as is authorised by law);

Fine not exceeding two hundred rupees;

Whipping.

*Third Class.*—Magistrates of the Third Class may pass the following sentences:—

Imprisonment not exceeding one month;

Fine not exceeding fifty rupees.

A Magistrate of the Third Class may not pass a sentence of solitary confinement, or of whipping.

Any Magistrate may pass any lawful sentence combining any of the sentences which he is authorised by law to pass.

*Explanation.*—A Magistrate may award imprisonment in default of payment of fine in addition to the full term of imprisonment which, under this section, he is competent to award.

*Note.*—The powers herein given to inflict fines do not affect powers to inflict fines given under any special laws.—Reg. v. Narayan Gangarano, 9 Bom. H.C.R. 343.

**Sect. 21.** *Powers conferred upon Magistrates hereinafter.*—In addition to the powers given in Sect. 20, the following powers are conferred, as hereinafter provided, upon Magistrates by this Act:—

1. Power to make over cases to a Subordinate Magistrate. (Sect. 44.)
2. Power to pass a sentence on proceedings recorded by a Subordinate Magistrate. (Sect. 46.)
3. Power to withdraw cases and to try or refer them for trial. (Sect. 47.)
4. Power to withdraw or refer appeals from convictions by Magistrates of the second and third classes. (Sect. 47.)
5. Power to arrest an accused person found in Court. (Sect. 104.)
6. Power to order the Police to investigate an offence. (Sect. 110.)
7. Power to record confessions or statements during a Police investigation. (Sect. 122.)
8. Power to authorise detention of a person during a Police investigation. (Sect. 124.)
9. Power to hold an inquest. (Sect. 135.)
10. Power to entertain complaints and receive Police reports. (Sect. 141.)
11. Power to entertain cases without complaint. (Sect. 142.)
12. Power to commit for trial. (Sect. 143.)
13. Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction. (Sect. 157.)
14. Power to direct warrant to landholder. (Sect. 162.)
15. Power to arrest offender in presence of Magistrate. (Sect. 166.)
16. Power to endorse warrant, or to order the removal of an accused person arrested under a warrant. (Sects. 168 and 170.)

17. Power to issue proclamation in cases judicially before him. (Sects. 171 and 353.)
18. Power to attach and sell property in cases judicially before him. (Sects. 172 and 354.)
19. Power to try summarily. (Sect. 222.)
20. Power to hear appeals from convictions by Magistrates of the second and third classes. (Sect. 266.)
21. Power to call for proceedings. (Sects. 295 and 296.)
22. Power to quash convictions in certain cases. (Sect. 328.)
23. Power to issue a search-warrant for letter in Post-Office. (Sect. 369.)
24. Power to endorse a search-warrant and order delivery of thing found. (Sects. 372, 373, and 376.)
25. Power to issue search-warrant otherwise than in the course of an inquiry. (Sect. 377.)
26. Power to revise bail orders. (Sect. 398.)
27. Power to sell perishable property of a suspicious character. (Sect. 415.)
28. Power to sell suspicious or stolen property. (Sect. 417.)
29. Power to demand security to keep the peace. (Sect. 491.)
30. Power to discharge recognisances to keep the peace. (Sect. 500.)
31. Power to demand security for good behaviour. (Sects. 504 and 505.)
32. Power to discharge person bound to be of good behaviour. (Sect. 511.)
33. Power to issue order to prevent obstruction, &c. (Sect. 518.)
34. Power to issue order prohibiting repetition of nuisance. (Sect. 519.)
35. Power to make orders, &c., in local nuisance cases. (Sect. 521.)
36. Power to make orders, &c., in possession cases. (Sect. 530.)
37. Power to make orders of maintenance. (Sect. 536.)

**Sect. 22.** *Powers common to all Magistrates.*—Magistrates of all classes shall, as such, have the following powers:—

1. Power to arrest an accused person found in Court. (Sect. 104.)

2. Power to record confessions or statements during a Police investigation. (Sect. 122.)
3. Power to authorise detention of a person during a Police investigation. (Sect. 124.)
4. Power to arrest offender in the presence of Magistrate. (Sect. 166.)
5. Power to endorse warrant, or to order the removal of an accused person arrested under a warrant. (Sects. 168 and 170.)
6. Power to issue proclamation in cases judicially before him. (Sects. 171 and 353.)
7. Power to attach and sell property in cases judicially before him. (Sects. 172 and 354.)
8. Power to endorse a search-warrant and order delivery of thing found. (Sects. 372, 373, and 376.)
9. Power to sell perishable property of a suspicious character. (Sect. 415.)

**Sect. 23.** *Powers which may be conferred on Magistrates of the Third Class.*—In addition to the powers mentioned in Sect. 22, a Magistrate of the third class may be invested with the following powers:—

(a) *By the Local Government—*

1. Power to hold inquests. (Sect. 135.)
2. Power to entertain complaints of offences in cases in which he has jurisdiction to try or to commit for trial. (Sect. 141.)
3. Power to commit for trial. (Sect. 143.)
4. Power to issue order to prevent obstruction, &c. (Sect. 518.)
5. Power to issue order prohibiting repetition of nuisance. (Sect. 519.)

(b) *By the Magistrate of the District—*

1. Power to hold inquests. (Sect. 135.)
2. Power to entertain complaints of offences in cases in which he has jurisdiction to try or to commit for trial. (Sect. 141.)
3. Power to issue order to prevent obstruction, &c. (Sect. 518.)



4. Power to issue order prohibiting repetition of nuisance.  
(Sect. 519.)

**Note.**—By this section, magistrates of the third class may be empowered only to “entertain complaints of offences;” while by Sects. 25 and 27, magistrates of the first and second class may be empowered to “entertain complaints of offences and receive police reports.” It has hence been argued that magistrates of the third class cannot try persons brought before them under Sect. 123. But it has been held, having regard to Sect. 141 (that section being added in brackets to the paragraphs in Sects. 23, 25, and 27, under which the powers in question may be bestowed), that the words “on report of a police officer” point only to those reports which operate as complaints or on which process is to be issued as on a complaint; and that the report specified in Sect. 127 being merely descriptive, and there being no sections, apart from Sects. 23, 25, and 27, to limit the power of magistrates of the third class to try prisoners brought before them under Sect. 123, that magistrates of the third class have such power.—*Reg. v. Lala Shambhu*, 10 Bom. H.C.R. Ap. Cr. Ju. 70. This case overrules *Reg. v. Jafar Ali*, 8 Bom. H.C.R. C.C. 113.

**Sect. 24. Powers of Magistrates of the Second Class.**—Magistrates of the second class shall, as such, in addition to the powers mentioned in Sect. 22, have the following power:—

1. Power to order the Police to investigate an offence in which the Magistrate has jurisdiction to try or to commit for trial. (Sect. 110.)

**Sect. 25. Powers which may be conferred on Magistrates of the Second Class.**—In addition to the powers given and referred to in Sect. 24, a magistrate of the second class may be invested with the following powers:—

(a) *By the Local Government*—

1. Power to hold inquests. (Sect. 135.)
2. Power to entertain complaints and receive police reports in cases in which he has jurisdiction to try or to commit for trial. (Sect. 141.)
3. Power to entertain without complaint cases which he has jurisdiction to try or to commit for trial. (Sect. 142.)
4. Power to commit for trial. (Sect. 143.)

5. Power to issue order to prevent obstruction, &c. (Sect. 518.)
6. Power to issue order prohibiting repetition of nuisance. (Sect. 519.)

(b) *By the Magistrate of the District—*

1. Power to hold inquests. (Sect. 135.)
2. Power to entertain complaints and receive police reports in cases in which he has jurisdiction to try or to commit for trial. (Sect. 141.)
3. Power to issue order to prevent obstruction, &c. (Sect. 518.)
4. Power to issue order prohibiting repetition of nuisance, (Sect 519.)

**Sect. 26.** *Powers of Magistrates of the First Class.*—Magistrates of the first class shall, as such, in addition to the powers mentioned in Sects. 22 and 24, have the following powers:—

1. Power to commit for trial. (Sect. 143.)
2. Power to issue search-warrant otherwise than in the course of an inquiry. (Sect. 377.)
3. Power to demand security to keep the peace. (Sect. 491.)
4. Power to demand security for good behaviour. (Sects. 504 and 505.)
5. Power to make orders, &c., in possession cases. (Sect. 530.)
6. Power to make orders of maintenance. (Sect. 536.)

**Sect. 27.** *Powers which may be conferred on Magistrates of the First Class.*—In addition to the powers given and referred to in Sect. 26, a magistrate of the first class may be invested with the following powers:—

(a) *By the Local Government—*

1. Power to make over cases taken up on complaint, &c., to a subordinate magistrate. (Sect. 44.)
2. Power to hold inquests. (Sect. 135.)
3. Power to entertain complaints of offences, and receive police reports. (Sect. 141.)
4. Power to entertain cases without complaint. (Sect. 142.)
5. Power to issue process for person within jurisdiction who has committed an offence outside magistrate's local jurisdiction. (Sect. 157.)

6. Power to try summarily. (Sect. 222.)
  7. Power to hear appeals from convictions by Magistrates of the second and third classes. (Sect. 266.)
  8. Power to sell suspicious or stolen property. (Sect. 417.)
  9. Power to issue order to prevent obstruction, &c. (Sect. 518.)
  10. Power to issue order prohibiting repetition of nuisance. (Sect. 519.)
  11. Power to make order, &c., in local nuisance cases. (Sect. 521.)
- (b) *By the Magistrate of the District—*
1. Power to hold inquests. (Sect. 135.)
  2. Power to entertain complaints of offences, and receive police reports. (Sect. 141.)
  3. Power to issue order to prevent obstruction, &c. (Sect. 518.)
  4. Power to issue order prohibiting repetition of nuisance. (Sect. 519.)

**Sect. 28.** *Powers of Magistrates of Divisions of Districts.*—Magistrates who, under the provisions of Sect. 40, are Magistrates of Divisions of Districts shall, as such, have all the powers given to Magistrates of the first class, and referred to in Sect. 26, and, in addition, shall have the following powers:—

1. Power to make over cases to a Subordinate Magistrate. (Sect. 44.)
2. Power to pass sentence on proceedings recorded by a Subordinate Magistrate. (Sect. 46.)
3. Power to withdraw cases, but not appeals, and to try or refer them for trial. (Sect. 47.)
4. Power to hold inquests. (Sect. 135.)
5. Power to entertain complaints of offences, and receive police reports. (Sect. 141.)
6. Power to entertain cases without complaint. (Sect. 142.)
7. Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction. (Sect. 157.)
8. Power to sell suspicious or stolen property. (Sect. 417.)
9. Power to issue order to prevent obstruction, &c. (Sect. 518.)

10. Power to issue order prohibiting repetition of nuisance. (Sect. 519.)

11. Power to make orders in local nuisance cases. (Sect. 521.)

*Provided that*, if a Magistrate of a Division of a District exercise the powers of a Magistrate of the second class, he shall not have power to demand security to be of good behaviour.

**Sect. 29.** *Powers which may be conferred on Magistrates of Divisions of Districts.*—In addition to the powers given and referred to in Sect. 28, the Local Government may confer on a Magistrate of a Division of a District, exercising the powers of a Magistrate of the first class, the following powers:—

1. Power to try summarily. (Sect. 222.)
2. Power to hear appeals from convictions by Magistrates of the second and third classes. (Sect. 266.)

**Sect. 30.** *Powers of Magistrates of Districts.*—Magistrates of Districts may, as such, exercise all the powers mentioned in Sect. 21.

**Sect. 31.** *Saving of other Powers.*—All other powers given by this Act or by any other law in force may be exercised by the officers or courts to whom or to which they are given.

**Sect. 32.** *Irregularities which do not vitiate Proceedings.*—If any magistrate, not being empowered by law in that behalf, does any one of the following things:—

1. If he makes over a case taken up on complaint, &c., to another magistrate,
2. If he withdraws a case and tries it himself, or refers a case for trial,
3. If he orders the Police to investigate an offence,
4. If he holds an inquest,
5. If he entertains a complaint or receives a Police report,
6. If he issues process for the apprehension of a person within his local jurisdiction who has committed an offence outside his local jurisdiction,
7. If he issues a search-warrant otherwise than in the course of any inquiry,

his proceedings shall not be set aside on the ground that he was not so empowered.

**Sect. 33.** *When irregular Commitments may be Validated.*—If any Magistrate, not being empowered by law, commits an accused

person to take his trial before a Court of Session or High Court, the court to which the commitment was made may, after perusal of the proceedings, accept the commitment, if it considers that the accused person has not been prejudiced, unless the accused person has objected to the jurisdiction of the committing Magistrate during the inquiry and before the order of commitment.

If such Court considers that the accused person was prejudiced, or if he objected to the jurisdiction of the committing Magistrate during the inquiry, and before the order of commitment, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

**Note.**—See Sects. 143 and 198. Sect. 25 of the High Courts' Criminal Procedure Code, provides that the commitment shall be also quashed if objection was made by *the prosecution* to the jurisdiction of the committing magistrate.

**Sect. 34. Irregularities which render Proceedings Void.**—If any Magistrate, not being empowered by law in that behalf, does any of the following things, his proceedings shall be void. That is to say:—

1. If he passes a sentence on proceedings recorded by another Magistrate,
2. If he entertains a case without complaint,
3. If he attaches and sells property under Sect. 172,
4. If he tries an offender summarily,
5. If he decides an appeal,
6. If he calls for proceedings,
7. If he issues a search-warrant for a letter in the Post Office,
8. If he revises a bail order,
9. If he sells suspicious or stolen property under Sect. 417,
10. If he demands security to keep the peace,
11. If he discharges recognisances to keep the peace,
12. If he demands security for good behaviour,
13. If he discharges a person lawfully bound to be of good behaviour,
14. If he makes an order in a local nuisance case,
15. If he issues an order to prevent an obstruction,
16. If he prohibits the repetition of a nuisance,
17. If he makes an order in a possession case, or
18. If he makes an order for maintenance.

*The Magistrate of the District.*

**Sect. 35. *Magistrate of the District.***—In every district there shall be a Magistrate of the First Class appointed by the Local Government who shall be called the Magistrate of the District, and shall exercise throughout his district all the powers of a Magistrate.

**Sect. 36. *Powers with which Deputy-Commissioners and Chief Executive Officers of District may be invested.***—In the territories subject to the Lieutenant-Governor of the Panjáb and in the territories administered by the Chief Commissioners of Oudh, the Central Provinces and British Burma, in Coorg, and in those parts of the other provinces in which there are Deputy-Commissioners or Assistant-Commissioners, the local government may invest the Deputy-Commissioner, or other chief officer charged with the executive administration of the district in criminal matters, with power to try as a Magistrate all offences not punishable with death, and to pass sentence of imprisonment for a term not exceeding seven years, including such solitary confinement as is authorised by law, or of fine, or of whipping, or any combination of these punishments authorised by law; but any sentence of upwards of three years' imprisonment passed by any such officer shall be subject to the confirmation of the Sessions Judge to whom such Deputy-Commissioner is subordinate. Such Sessions Judge may either confirm, modify, or annul any sentence referred for confirmation; or if he think further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused person to be necessary, he may direct such inquiry or evidence to be made or taken.

**Note.**—Magistrates acting under this section are exempted from the provision in Sect. 314 affecting conviction by magistrates at one trial of more than one offence.—See Sect. 314. An appeal from a trial under this section lies to the High Court.—Sect. 270. The above words, "or if he think . . . made or taken," are added by Act xi. of 1874.

*Subordinate Magistrates.*

**Sect. 37. *Subordinate Magistrates.***—The Local Government may appoint as many other persons besides the Magistrate of the District, as it thinks fit, to be magistrates of the first, second, or third class in the District.

(23G.) All such Magistrates shall be subordinate to the Magistrate of the District, but neither the Magistrate of the District nor the Subordinate Magistrates shall be subordinate to the Sessions Judge, except to the extent and in the manner provided by this Act.

The Local Government shall not have power to direct that any Magistrate may try any offence which Magistrates of his class are not authorised to try, or pass any sentence which Magistrates of his class are not authorised to pass by Sect. 20.

**Sect. 38 (23c).** *Power to determine local jurisdiction of a Magistrate of District.*—The Local Government may, by notification in the official Gazette, prescribe the local limits of the jurisdiction of a Magistrate of the District, and may by such notification from time to time alter such local limits.

**Sect. 39.** *Division of Districts into Divisions.*—The Local Government may divide any district into divisions, and from time to time alter their limits, and may, with the previous sanction of the Governor-General in Council, declare any local area to be a District. All existing divisions of districts which are now usually put under the charge of a Magistrate shall be divisions until their limits are so altered.

**Note.**—The words, “and may . . . a district,” are added by Act xi. of 1874.

**Sect. 40 (23D).** *Local Government may put Magistrate in charge of Division.*—The Local Government may place any Magistrate of the first or second class in charge of a division of a District.

Such Magistrate shall be called a Magistrate of a division of a District, and shall exercise the powers conferred on him under this Act, or under any law for the time being in force, subject to the control of the Magistrate of the District.

*Delegation of power to Magistrate of District.*—The Local Government may, if it thinks fit, delegate its powers under this section to the Magistrate of the District.

**Sect. 41.** *Subordination of Officers to Magistrate of division of District.*—Every Magistrate in a division of a District shall be subordinate to the Magistrate of the division of the District, subject, however, to the general control of the Magistrate of the District.

**Sect. 42.** *Special Magistrates.*—The Local Government may confer upon any person all or any of the powers of a Magistrate of the first,

second, or third class in respect to particular offences, or to a particular class or particular classes of offences, or in regard to offences generally in any part of a district or in any one or more districts, subject to such Local Government. Such Magistrates shall be called "Special Magistrates."

With the previous sanction of the Governor-General in Council, the Local Government may delegate, with such limitations as it may think proper, to any Officer under its control, the power conferred by the first clause of the section.

**Note.**—The words, "with the previous sanction . . . of the section," are added by Act xi. of 1874.

**Sect. 43. *Mode of conferring Powers.***—In conferring powers under this Act the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

**Sect. 44 (273, 274, 275). *Transfer of Criminal Cases to Subordinate Magistrate.***—The Magistrate of the District, or any Magistrate of a division of a District, may make over any case taken up by him on suspicion, or brought before him on complaint, or on report by the Police, for inquiry or trial to any Magistrate subordinate to him, to be dealt with to the extent of the powers with which the Subordinate Magistrate may have been invested under the provisions hereinbefore contained.

The Magistrate making the reference may, if the case was brought forward on complaint, before such reference, examine the complainant as prescribed in this Act; but if he does not do so, the Magistrate to whom the case is referred shall proceed as if the complaint had been made to him.

The order of reference shall be recorded in a proceeding, and, if the case has been brought forward on the report of a Police officer, shall be recorded on such report; and all processes issued for causing the attendance of the accused person or the witnesses shall direct them to attend before the Magistrate to whom the case has been referred.

The Magistrate making the reference may, if he thinks proper, retransfer to his own file the case referred under paragraph 1 of this section, and when he has done so, and not before, may proceed therein.

**Note.**—In this section the word "criminal" stood originally before "case," but under Act xi. of 1874 it is omitted.



This section overrules the case of *Bhugoban Chunder Podder v. Mohun Chunder Chuckerbutty*, 12 W.R. Crim. 49, and 3 Ben. L.R.A. Cr. J. 67, by allowing the magistrate of a district to make over, not only cases brought before him on complaint and on a report of the police, but also those which he has himself taken up on suspicion, which was not the case under the old Code. Two decisions of the High Court at Madras on the old Sect. 273, reported in 6 Madras H.C. Rep. App., pp. 2 and 41, to the effect that that section did not apply to cases referred by civil courts under the old Sect. 171 for investigation, are also overruled by Sect. 471 of this Code, which provides that a magistrate receiving such a case may, if he is empowered to make transfers of cases, transfer the inquiry to some other competent magistrate instead of making the inquiry himself.

There must still be a *reference* by the magistrate of the district, or a division of a district. It is not sufficient for a subordinate magistrate to apply for and obtain the sanction of his superior for him to try a charge of which he first had cognizance, and in respect of which no complaint has been made to his superior—*Reg. v. Tajmuddi Lahory*, 1 Ben. L.R.A. Cr. J. 1, and 10 W.R. Crim. 4; unless, indeed, it should be held that the authority given to the magistrate of the district by the new Code to empower subordinate magistrates to receive complaints is duly exercised by his exercising that authority in respect of a particular case. In any event, Sects. 32 and 33 would prevent the proceedings in such a case from being absolutely null and void.

From the general tenor of this Code, it would appear that the present magistrates of divisions of districts are in the same position as the old full-power magistrates; and although executively inferior to the magistrate of the district, are not subordinate to him within the meaning of this section, so as to permit the transfer of cases by him to them.—See *Reg. v. Krishna Parashram*, 5 Bombay H.C. Rep. C.C. 69. And Sect. 40 supports this; for if the magistrate of a division of a district were intended, under this Code, to be subordinate, for the purposes of this section, to the magistrate of the district, the express provision of Sect. 40, that the magistrate of a division of a district shall be “subject to the control of the magistrate of the district,” would be mere surplusage.

Where a case has once been made over to a subordinate magis-

trate, the referring magistrate has no jurisdiction to do anything in the matter so long as the order of reference is in existence—Reg. v. Belilias, 12 W.R. Crim. 53, and 3 Ben. L.R. App. 151; but the last clause of this section gives the referring magistrate power to withdraw the case from the file of the subordinate magistrate and proceed with it himself. This upholds the ruling in the case of Reg. v. Belilias, *ubi sup.*, and also a decision of the Madras High Court reported in 4 Madras H.C. Rep. App. 40.

Magistrates who, under Sect. 40, are magistrates of divisions of districts, have, by virtue of Sect. 28, power to transfer cases under this present section; and under Sect. 27 the local government may also confer this power on magistrates of the first class.

It is to be noticed that one subordinate magistrate has no authority to refer to another subordinate magistrate cases referred to himself for disposal.—Ruling, 7 Mad. H.C. Reps. 34. A transfer from one criminal court to another of equal jurisdiction can only be by the High Court.—Sect. 64.

**Sect. 45 (276).** *Procedure of Magistrate in cases beyond his Jurisdiction.*—If, in the course of a proceeding before a Magistrate, the evidence appears to him to warrant a presumption that the accused person has been guilty of an offence which such Magistrate is not competent to try, or for which he is not competent to commit the accused person for trial—

he shall stay proceedings and submit the case to any Magistrate to whom he is subordinate, or to such other Magistrate having jurisdiction as the Magistrate of the District directs.

The Magistrate to whom the case is submitted shall either try the case himself or refer it to any officer subordinate to him having jurisdiction, or he may commit the accused person for trial.

In any such case, such Magistrate or other officer as aforesaid shall examine the parties and witnesses, and shall proceed in all respects as if no proceedings had been held in any other Court.

But any statement or confession duly made by an accused person in the course of the proceedings before the Magistrate before whom the case was originally brought shall be admissible as evidence in all subsequent proceedings.

**Note.**—The Bombay High Court, in the case of *Reg. v. Kuberio Ratno*, 4 Bombay H.C. Rep. C.C. 8, has ruled that the magistrate to whom the case is submitted must not only be one to whom the referring magistrate is subordinate, but also one who has power to deal with the case.

A magistrate to whom a case is submitted under this section is bound to pass an independent judgment upon the facts as they may appear to him upon the record, and must not take them as found by the Lower Court—2 Madras Jurist, 323, and 5 Madras H.C. Rep. App. 43; and if the materials for a judgment appear to be insufficient, he may himself call up and examine the witnesses, and, if necessary, take further evidence. “Any magistrate to whom he is subordinate” means the magistrate of a district or magistrate of a division of a district (Sects. 37, 41), and a person, therefore, sentenced by a magistrate to whom the case had been so referred, is a “person convicted on a trial held” by that magistrate, within the meaning of Sect. 269; and consequently an appeal lies from the sentence to the Court of Session, provided the sentence is from its magnitude appealable.—Madras H.C., 20th May 1867; 2 Madras Jurist, 323. The higher magistrate is not, however, empowered to forbid his subordinate to take up cases if he thinks before he commences the inquiry he may have to act under this section.—*Reg. v. Guna bin Ragnak*, 3 Bombay H.C. Rep. C.C. 29.

**Sect. 46** (277, 278). *Procedure when Magistrate cannot pass Sentence sufficiently Severe.*—Whenever a Magistrate of the second or third class, having jurisdiction, finds an accused person guilty, and considers that he ought to receive a more severe punishment than such magistrate is competent to adjudge, he may record the finding, and, if sentence has not been passed, may submit his proceedings and forward the accused person to the Magistrate of the District, or to the Magistrate of the division of the District to whom he is subordinate.

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may summon any further witnesses and take their evidence, and shall pass such judgment, sentence, or order in the case as he deems proper, and as is according to law; provided that he shall not exceed the powers ordinarily exercisable by him under Sect. 20 of this Act.

*Magistrate may in the first instance Commit.*—The magistrate who originally dealt with the case may, if he is empowered to hold inquiries into cases triable by the Court of Session, and to commit persons to take their trial before such Court, instead of submitting his proceedings to another Magistrate, commit the accused person for trial before the Court of Session instead of finding him guilty.

*Illustration.*

A Magistrate of the third class having jurisdiction finds an accused person guilty, but considers that he ought to receive a more severe punishment than imprisonment for a term of one month, or a fine of fifty Rupees. On recording the finding, submitting the proceedings and forwarding the accused to the Magistrate of the District, such Magistrate may pass a sentence on the accused, including solitary confinement and whipping.

**Note.**—The above Illustration is added by Act xi. of 1874.

Under Sect. 277 of the old Code, which authorised the magistrate to whom the case was referred to pass such "sentence or order" in the case as he might deem proper, and as might be according to law, it was held that such magistrate was not empowered to commit the case so referred to him for trial at the Sessions, on the ground that he also could not pass an adequate punishment. — *In re Bhickaree Mullick*, 10 W.R. Crim. 50.

When the proceedings in a case tried by a subordinate magistrate are submitted under this section, the accused is entitled to be present at the passing of such sentence, because the duties of the magistrate of the district not being confined to the mere passing of the sentence, but he having power to pass such order in the case as he deems proper; and the magistrate of the district having power to, and frequently, in fact, reversing the conviction and releasing the prisoner,—it follows that the prisoner should always be present to offer to the magistrate of the district such reasons as he may have against the conviction, or to state his plea, if he has any, for a lenient punishment.—*Reg. v. Raghā Naranji*, 7 Bombay H.C. Rep. C.C. 31.

**Sect. 47 (36).** *Magistrate may withdraw or refer Cases.*—Magis-

trates of Districts and Magistrates of Divisions of Districts may respectively withdraw any case from any Magistrate subordinate to them, and may inquire into or try the case themselves, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Magistrates of Districts may withdraw any criminal appeal from any Subordinate Magistrate who has been authorised to hear appeals from the convictions of Magistrates of the second and third classes, and may refer criminal appeals to any competent Magistrate subordinate to them.

**Note.**—The word “criminal” stood originally before the word “case,” but under Act xi. of 1874 it is omitted.

The second clause of this section is new.

For a case in which the High Court rescinded an order made under the corresponding section of the old Code, see *in re Naba Kumar Banerjee*, 5 Ben. L.R. App. 45, and 14 W.R. Crim. 12. The principle which should govern the removal of cases under this section will, as far as settled by decision, be found under Sect. 64. If a magistrate unempowered withdraw a case and try it himself, or refer a case for trial under this section, his proceedings are not void.—Sect. 32.

**Sect. 48.** *Local Government may empower Magistrates of Districts to withdraw classes of cases.*—The Local Government may authorise the Magistrate of the District to withdraw from the Magistrates subordinate to him, whether in charge of divisions of Districts or not, either such classes of cases as he thinks proper, or particular classes of cases.

**Sect. 49.** *Local Government may authorise Magistrate of District to distribute business by localities.*—The Magistrate of the District, under the general or special orders of the Local Government, may authorise any Magistrate subordinate to him to entertain complaints arising within certain local limits, and may from time to time vary such orders; Provided that no such Magistrate shall be authorised to entertain any complaint of any offence which he is not competent to try or to commit for trial.

#### *Magistrates' Benches.*

**Sect. 50.** *Power to invest Magistrates sitting as a bench with*

*certain powers.*—The Local Government may direct any two or more Magistrates to sit together as a bench, and may invest such bench with the powers of a Magistrate of the first, second, or third class, and direct it to try such cases or such classes of cases only and within such limits as it thinks fit.

**Sect. 51.** *Powers exercisable by such bench in absence of special directions.*—In the absence of any special direction as to the powers of any such bench, it shall have the powers of a Magistrate of the highest class to which any one of its members belongs, and who is present taking part in the proceedings.

**Sect. 52.** *Magistrate of the District may frame rules for guidance of benches.*—The Magistrate of the District may, subject to the general orders of the Local Government, make rules for the guidance of Magistrates' benches in his District.

Such rules shall not be inconsistent with the provisions of this Act, and may deal with the following subjects :—

The classes of cases to be tried.

The times and places of sitting.

The constitution of the bench for conducting trials.

The mode of settling differences of opinion which may arise between the magistrates in Session.

**Sect. 53.** *Magistrate of District may vary or annul rules.*—The Magistrate of the District may, subject to the like orders, vary or annul, from time to time, any rules made by himself or by his predecessor under the last preceding section.

### *Continuance and Alteration of Powers.*

**Sect. 54** (23F). *Powers may be varied or cancelled.*—The Local Government may vary or cancel any powers with which any person may have been invested under this Act or any enactment hereby repealed.

**Sect. 55** (23B). *Powers of officer temporarily succeeding to vacancies in office of Magistrate of District.*—When, in consequence of the office of a Magistrate of a District becoming vacant, any officer succeeds temporarily to the chief executive administration of the District in criminal matters, such officer shall, pending the orders of the Local Government, exercise all the ordinary powers and perform all the duties of the Magistrate of the District.

**Sect. 56 (23F).** *Continuance of powers of officers transferred.*—Whenever any person holding an office in the service of Government, who has been invested with any powers under this Act or any enactment hereby repealed in any district, is transferred to an equal or higher office of the same nature within another district, he shall, unless the Local Government otherwise directs, continue to exercise the same powers in the District to which he is so transferred.

## CHAPTER V.

## OF PUBLIC PROSECUTORS.

**Sect. 57.** *Appointment of public prosecutor.*—The Local Government may, if it thinks proper, appoint officers to be called public prosecutors.

**Sect. 58.** *Appointment may be for particular case or generally.*—Public prosecutors may be appointed either for a particular case, or for particular classes of cases, or for all cases throughout the whole or any part of any province.

**Sect. 59.** *Right of private persons to prosecute.*—Any court inferior to a Court of Sessions inquiring into or trying any case may permit any person to conduct the case as prosecutor, but no person shall be entitled to do so without such permission. Any person permitted to prosecute may conduct the prosecution personally or by counsel.

**Note.**—This is a modified legislative sanction of the case of Chunder Charan Chutterjee v. Chunder Coomar Ghose, 14 W.R. Crim. 23, where it was decided that a pleader other than the Government prosecutor might appear on behalf of a private prosecutor.

The words “inferior . . . Sessions,” are added by Act xi. of 1874.

**Sect. 60.** *Rights of public prosecutor.*—Barristers, &c., privately instructed.—The public prosecutor may appear and plead without any written authority before all Courts in which any case under his charge is under inquiry, trial, or appeal, and if any private person instructs any barrister, attorney, pleader, or vakil to prosecute any person in any case under the charge of the public prosecutor, the public prosecutor shall have the management of the case, and such other person shall act under his directions.



**Note.**—The only meaning which can reasonably be affixed to the latter portion of this section is, that if a barrister prosecutes on behalf of a private prosecutor, he is to receive his instructions from the public prosecutor, or from a solicitor, and not from the private prosecutor when his instructions differ from those of the public prosecutor. It is impossible to suppose that the legislature intended that in such a case a barrister going into the Mofussil was to act as junior to a public prosecutor on the receipt perhaps of no more than eighty or a hundred rupees a month.

**Sect. 61.** *Effect of withdrawal of charge by public prosecutor.*—The public prosecutor may, with the consent of the Court, withdraw any charge against any person in any case of which he is in charge, and upon such withdrawal, if it is made whilst the case is under inquiry, the accused person shall be discharged. If it is made when he is under trial, the accused person shall be acquitted.

**Sect. 62.** *Notice to public prosecutor of appeal in cases prosecuted by him.*—If an appeal is brought in any case in which any person prosecuted by the public prosecutor has been convicted, notice of such appeal and a copy of the grounds of appeal shall be given to such public prosecutor by the Appellate Court, and the Court shall also give him due notice of the time and place at which such appeal is to be heard.

## CHAPTER VI.

## THE PLACE OF INQUIRY AND TRIAL.

**Sect. 63 (26).** *Place for inquiry and trial of offence.*—Every offence shall be inquired into, and, if tried by a Magistrate, shall be tried in the district in which it was committed. If tried by a Court of Session it shall be tried by that Court of Session to which the Magistrate commits.

Magistrates shall ordinarily commit to the Court of Session for the Sessions Division in which the district to which they are appointed is situated, but the Local Government may direct that any cases or class of cases committed in any district may be tried in any Sessions Division.

Provided that such direction be not repugnant to any direction previously issued under the 24th and 25th of Victoria, cap. 104, s. 15, or under Sect. 64 of this Code.

*Explanation.*—Offences created by local and special laws may be inquired into and tried in any place where the inquiry or trial might be held under the provisions of those laws or of this Code.

*Note.*—The words “Provided that . . . of this Code,” are added by Act xi. of 1874.

Where the prisoner was charged with having, at Calcutta, abetted the waging of war against the Queen, and was tried at the Sessions Court of Patna, it was held that the Sessions Court of Patna had jurisdiction to try him, because he was a member of a conspiracy, other members of which had done acts within the district of Patna, in pursuance of the original concerted plan, and with reference to the common object. It was held also that the Court of Patna had jurisdiction, because the prisoner had sent money from Calcutta to Patna by hundis, and until that money reached its destination

the sending continued on the part of the prisoner.—Reg. v. Amir Khan, 9 B.L.R. 36.

**Sect. 64 (35).** *High Court may transfer cases.*—Whenever it appears to the High Court that such order will promote the ends of justice, or tend to the general convenience of the parties or witnesses, it may direct the transfer of any particular criminal case, or appeal, or class of cases or appeals from a Criminal Court subordinate to its authority, to any other such Criminal Court of equal or superior jurisdiction, or may order that any offence shall be inquired into or tried in any district or division of a district other than that in which the offence has been committed, or that it shall be tried before itself. If the High Court withdraws any case from any other Court for trial before itself, it shall observe the same procedure which that Court would have observed if the case had not been so withdrawn.

Provided that the orders issued under this section shall not be repugnant to orders issued by the Local Government under the last preceding section.

**Note.**—This proviso is repealed by Act xi. of 1874. See Sect. 32, High Courts' Criminal Procedure Code.

Under the letters patent of the High Court of Madras, a similar power is given to it, independently of the above section; and it has been decided in that court, under the letters patent, that to warrant the removal of a preliminary investigation from the magistrate having cognizance of it in the ordinary and regular course of law, it should appear clearly and satisfactorily to be necessary in the interests of justice, or to prevent some serious inconvenience or hardship to the parties and witnesses generally.—*Ex parte Narasimhulu Pantalu*, 1 Madras Jurist, 190. See also the case of Reg. v. Krishto Chuuder Ghose, 2 W.R. 58; and *in re Shankar Abaji Hoshing*, 6 Bombay H.C. Rep. C.C. 69. As a general rule the court will not exercise its powers of transfer in a case of forgery or perjury *solely* on the ground that the judge who is to try the case has already, while sitting as a judge on the civil side, formed an opinion that the document has been forged or the perjury committed; but when the transfer can be made without any improper interference with the course of justice, and without any great inconvenience to witnesses, the transfer in such a case is not only a fair concession to the accused, but also a means of relieving the

judge from a position which he would be anxious to avoid.—*In re Arunachella Reddi*, 5 Madras H.C. Rep. 212.

Where appeals were pending before a magistrate who had taken an active part in the prosecution of the prisoners (who had been convicted), and had recorded the evidence of the material witnesses as to the case going to trial; the High Court transferred the appeals to another court for hearing.—*In re Het Lall Roy*, 22 W.R. Crim. 75. See also the powers of transfer given to the High Courts under their respective charters.

**Sect. 64A.** Whenever it appears to the Governor-General in Council that it will promote the ends of justice or tend to the general convenience of parties or witnesses, he may, by notification in the 'Gazette of India,' direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court.

And the Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in or presented to such Court.

**Note.**—The words "And the Court . . . to such Court," are added by Act xi. of 1874.

**Sect. 65 (27).** *Accused triable in district where act is done, or where consequence ensues.*—When a person is accused of the commission of any offence by reason of anything which has been done, or of anything which has been omitted to be done, and of any consequence which has ensued, such offence may be inquired into or tried in any district in which any such thing has been done or omitted to be done, or any such consequence has ensued.

### *Illustrations.*

- (a) A is wounded in the district of X and dies in district Z. The offence of the culpable homicide of A may be inquired into and tried either in X or Z.
- (b) A is wounded in the district of X, and is during twenty days unable to follow his ordinary pursuits in the district Y, where he is being treated. The offence of causing grievous hurt to A may be inquired into and tried either in X or Y.

- (c) A is put in fear of injury in district X, and is thereby induced, in the district of Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into and tried either in district X or district Y.

**Sect. 66** (28, 31, 31A). *Place for trial where act is offence by reason of relation to other offence.*—When an act is an offence by reason of its relation to any other act which is also an offence, a charge for the first-mentioned offence may be inquired into and tried either in the district in which it happened or in the district in which the offence with which it was so connected happened.

*Illustrations.*

- (a) A charge of abetment may be inquired into and tried either in the district in which the abetment was committed or in the district in which the offence abetted was committed.
- (b) A charge of receiving or retaining stolen goods may be inquired into and tried either in the district in which the goods were stolen, or in any district in which any of them were at any time dishonestly received or retained.
- (c) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into and tried in the district in which the wrongful concealing or in the district in which the kidnapping took place.
- (d) A, B, C and others combine together to abet the waging of war against the Queen. Any of the conspirators may be tried in any district in which acts were done by any one of the persons with whom he or they conspired in pursuance of the original concerted plan and with reference to the common object.

**Note.**—Sect. 66 does not confer jurisdiction upon a magistrate to try the subject of a foreign state for receiving stolen property when neither the act constituting it stolen property nor the receiving took place within British territories.—Reg. v. Becha Marva, 4 Bombay H.C. Rep. C.C. 38.

The words “district in which it happened,” refer to a district created by the Code. Abetment by a foreign subject in a foreign

territory of an offence committed in British territory does not make the foreign subject amenable to the jurisdiction of a British Court under this section.—*Reg. v. Portai*, 10 Bom. H.C.R. Ap. Cr. Ju. 356.

The law with respect to conspiracies and conspirators had, before the coming into operation of this Code, been settled in accordance with illustration (d) in the case of *Reg. v. Amir Khan*, 17 W.R. Crim. 15.

**Sect. 67** (29, 30, 32, 33). *Place for inquiry or trial where scene of offence is uncertain; or not in one district.*—When it is uncertain in which of several districts an offence was committed; or where an offence is committed partly in one district and partly in another; or

*offence is continuing*—where the offence is a continuing one, and continues to be committed in more districts than one; or,

*consists of several acts*—where it consists of several acts done in different districts, it may be inquired into and tried in any one of any of such districts.

#### *Illustrations.*

- (a) An offence committed on a journey or voyage may be inquired into and tried in any district through which the person by whom the offence was committed, or the person against whom, or the thing in respect of which, the offence was committed passed in the course of that journey or voyage.
- (b) An offence committed near the boundary between two districts may be inquired into and tried in either.
- (c) A charge of being a thug or of having belonged to a gang of dacoits may be inquired into and tried wherever the person charged happens to be when the charge is made.
- (d) A charge of having escaped from custody may be inquired into and tried wherever the person charged happens to be when the charge is made.
- (e) A charge of criminal misappropriation or of criminal breach of trust may be inquired into and tried either in the district in which the property which is the subject of the offence was received, or in the district or districts in which the whole or any part of it has been misappropriated, or where the offence of criminal breach of trust has been wholly or partly committed.

(f) A steals a buffalo from B in district W, and personally or by his agents conveys the buffalo through districts X and Y into district Z. This is a continuing offence, and A may be tried either in W, X, Y, or Z.

**Note.**—It has been held by Phear, J., that illustration (a) only gives jurisdiction to the tribunal at the place where the complainant or offender *first* stops after the commission of the offence.—Peerun v. Field, 21 W.R. Crim. 66, and 13 B.L.R. 4 *sub nom.* Reg. v. Piran.

**Sect. 68** (32). *Murder as a thug, dacoity, or dacoity with murder.*—The offence of murder as a thug, dacoity, or dacoity with murder, may be inquired into and tried wherever the person accused may happen to be when arrested, or in any other district in which he might be tried under any other provision of this Code, or any other law relating to the trial of such offence.

**Sect. 69** (34). *High Court to decide in case of doubt.*—Whenever any doubt arises as to the district in which any offence should be inquired into or tried, the High Court within whose jurisdiction the offender is apprehended may decide in which district the offence shall be inquired into or tried.

**Sect. 70.** *Effect, on Sentence of holding investigation, &c. in wrong district.*—No sentence or order of any criminal court shall be liable to be set aside merely on the ground that the investigation, inquiry, or trial was held in a wrong district or sessions division, unless it is proved or appears that the accused person was actually prejudiced in his defence, or the prosecutor in his prosecution by such error, in either of which cases a new trial may be ordered.

## CHAPTER VII.

## OF CRIMINAL JURISDICTION OVER EUROPEAN BRITISH SUBJECTS.

**Sect. 71. *European British Subject.***—The expression “European British subjects” means in this Act—

(1.) All subjects of Her Majesty born, naturalized, or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American, or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal.

(2.) The children and grandchildren of any such person by legitimate descent.

**Note.**—This is an entirely new section, defining the class to which the term “European British subject” applies. It excludes from that term all subjects of the United States and the Continental powers, unless they can prove that one of their parents or grandparents, from whom they are descended by *legitimate descent*, came within the meaning of Clause 1 of this section. It excludes all the illegitimate children of those enumerated in Clause 1, unless they have themselves been born, naturalized, or acquired a domicile in one of the places therein named.

Before committing a European British subject for trial by a court having jurisdiction, the magistrate holding the preliminary inquiry should satisfy himself that there is evidence of his being amenable to the jurisdiction of the court to which he commits him; for the question as to whether or not the accused is a European British subject, is a matter of fact to be determined judicially on the evidence, in the event of the prisoner raising the question.—Reg. v. Parks, 10 W.R. Crim. 6. If an accused person plead before a magistrate that he is a European British subject, and therefore that



he is not amenable to the local courts, and the magistrate has no reason to distrust his statement, it is sufficient for the magistrate to act on this allegation, and if he considers the evidence to be such as to warrant the commitment of the accused person to the High Court (or Chief Court in the Punjab), he should make such commitment. But see Note on *Reg. v. Foy* below. The magistrate should, however, forward as a witness some person who heard the accused person make this plea.—Calcutta High Court Circular of 1864. See also *Reg. v. Turnbull*, 6 Madras H.C. Rep. 9. A magistrate is bound to give an accused person an opportunity of pleading that he is a European British subject.—*Clark v. Beane*, Calcutta H.C. Circular, March 13, 1866. And although under the new Code, the omission to claim the rights of a European British subject amounts to a waiver of such privileges; yet if a magistrate has reason to believe that an accused person brought before him is a European British subject, it is his duty to ask him.—Sects. 83 and 84.

The duties of magistrates in cases in which the accused persons may be European British subjects, and the penalties to which they are liable in consequence of any irregularity in their proceedings, were discussed and made the subjects of judicial decisions in the cases of *Calder v. Halkett*, 2 Moore's Indian Appeals, 293, and *R. v. Foy*, Taylor and Bell's Reports, 219. The principles of these decisions, it will be observed, have been embodied in the provisions of the present Code.

In the first-mentioned case, the Judicial Committee of the Privy Council laid down that the defendant, who was a magistrate in India, had not rendered himself liable to an action for trespass by reason of his having acted without jurisdiction in unlawfully confining a European British subject, unless "he knew or ought to have known of the defect in his jurisdiction;" and as there was no evidence of that fact on the part of the plaintiff, the appeal was dismissed. "If the magistrate know that the prisoner is a European British subject, it is his duty, whether the prisoner claims exemption or not, to abstain from further proceedings against him as a magistrate. If, without any actual knowledge on the subject, the magistrate have reason to suppose that the prisoner is such British subject, it is the magistrate's duty to ascertain from him whether he alleges or denies that he is one, and to give him every

facility by allowing time and otherwise for proving that he is, the burden of such proof being upon him. A magistrate will not be justified, if he has reason to suppose that a prisoner is a European British subject, in proceeding against him as if he were not one, without first giving him a distinct opportunity of pleading that he is one. If he do not so plead, or be not able, upon time being allowed him for that purpose, to adduce any satisfactory proof of his being a European British subject, the magistrate will be quite warranted in proceeding against him. If he do so plead, and give proof, or produce documents which, although not amounting to full legal proof of his status, satisfy the court that he is really a European British subject, the magistrate should, without putting the prisoner fully to complete his proof by strict legal evidence, take up the case as a justice of the peace, and send it up to the Supreme Court, taking care to record distinctly the statement made by the prisoner, that he is a European British subject of lawful European descent."—*R. v. Foy, supra.*

As to the nature of the evidence required to prove a plea of being a European British subject, there have been several decisions in this country. In the case of *Archer v. Watkins*, 8 Ben. L.R. 372, where the question arose in the determination of the question as to the age at which Mr Watkins, one of the defendants, ceased to be a minor, Phear, J., said, p. 380: "It appears to me impossible to say, on the evidence before me, that Mr Watkins' father was a European British subject. I do not know where he came from, or anything about his family. The first fact I know with regard to him is, that he was born at sea; then that he lived the greater, at least the latter, portion of his life in Calcutta. Who his parents were, or whence they came, no one can say. I do not know even that the ship on board which he was born was a British ship. He was manifestly domiciled here. In short, I find no ingredient whatever sufficient to give him the character of a European British subject. If he was not so, certainly Mr Watkins was not." In the case of *Reg. v. Turnbull*, 6 Madras H.C. Rep. 7, the facts appeared to be that the prisoner was the legitimate grandson of one Thomas Turnbull, who was the son of one John Turnbull, said to have been a sergeant in the service of the King or of the East India Company; but the evidence was not sufficient to establish a lawful marriage between John Turnbull and a native Christian woman, whose great-grandson

Thomas Turnbull was, and the evidence was also insufficient to establish more than that John Turnbull was a European, there being nothing to show that he was British born; and it was held that the plea to the jurisdiction of the Mofussil Court was not made out. In a somewhat similar case to the foregoing—*Rollo v. Smith*, reported in 3 Madras Jurist, 73—Markby, J., decided that a man was a European British subject; but this case is not cited here at length, because the present section does not allow the privilege to be pleaded by great-grandchildren.

In the case of *Reg. v. Donoghue*, 5 Madras H.C. Rep. 277, the High Court doubted whether a local legislature had power in its own right to enact that a European British subject should be punishable by a magistrate on summary conviction for an offence newly created by the local legislature; but the provisions of the present Code would doubtless remove in many cases the practical effect of that opinion.

**Sect. 72.** *Officers who may inquire into and try offences committed by European British subjects.*—No Magistrate, or Justice of the Peace, or Sessions Judge, shall have jurisdiction to inquire into a complaint or try a charge against a European British subject unless he is himself a European British subject.

No Magistrate shall have such jurisdiction unless he is a Magistrate of the first class and a Justice of the Peace.

No Justice of the Peace shall have such jurisdiction unless he is a Magistrate of the first class.

**Note.**—As to the appointment of justices of the peace, see Act ii. of 1869.

See a ruling of the Madras High Court, 7 Mad. H.C. Reps. 32.

**Sect. 73** (40, 40A, 41). *Who may hear complaints and issue process.*—Any Magistrate who is authorised by law to entertain complaints, may entertain against European British subjects such complaints as he is authorized to entertain in the case of other persons.

If he issues any process for the purpose of compelling the appearance of a European British subject accused of an offence, such process must be returnable before a Magistrate competent to inquire into or try the case.

**Sect. 74.** *What Magistrates may inquire into complaints against*

*European British subjects.*—Any competent Magistrate may inquire into complaints of any offence made against a European British subject.

*When Magistrate may try, and extent of jurisdiction.*—If the offence complained of is a Magistrate's case, and can in the opinion of such Magistrate be adequately punished by him, he shall proceed as is hereinafter in this Code directed, according to the nature of the offence, and on conviction may pass on such European British subject any sentence warranted by law, not exceeding three months' imprisonment, or fine up to one thousand rupees, or both.

**Sect. 75. Commitment to Court of Session.**—When the offence complained of cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused person ought to be committed, commit him to the Court of Session.

*Commitment to High Court.*—When the offence or one of the offences complained of is punishable with death or transportation for life, the commitment shall be to the High Court. And where any person so committed is charged with several offences, of which one is punishable with death or transportation, and the other with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offence.

**Note.**—The words, "or one . . . offences;" and, "And where . . . other offence," are added by Act xi. of 1874.

**Sect. 76. Jurisdiction of Court of Session.**—Sessions Judges or additional Sessions Judges, and, when specially empowered in that behalf by the local Government, Assistant Sessions Judges, who are European British subjects and who have been Assistant Sessions Judges for not less than three years, may pass on European British subjects any sentence warranted by law not exceeding one year's imprisonment, or fine, or both.

*When Sessions Judge finds his powers inadequate.*—If at any stage of the proceedings the Sessions Judge thinks the offence cannot be adequately punished by such a sentence, he shall record his opinion to that effect, and transfer the case to the High Court. The Sessions Judge may either himself bind over, or direct the committing Magis-

trate to bind over, the complainant and witnesses to appear before such High Court.

**Note.**—See Sect. 33.

**Sect. 77.** *Procedure when Sessions Judge is not a European British subject.*—If the Sessions Judge of the Sessions division within which the offence is ordinarily triable is not a European British subject, the case shall be reported by the committing Magistrate for the orders of the High Court.

**Sect. 78.** *Mode of conducting Trials by Court of Session.*—Trials of European British subjects before the Court of Session shall be conducted according to the provisions of Chapter XIX.

In trials with assessors not less than half the number of assessors, and in trials by jury not less than half the number of jurors, shall be European British subjects.

**Note.**—Trials of Europeans, not being European British subjects, before the Court of Session, *must* be by jury if the accused does not waive his right, but the exception of European British subjects from Sect. 234 leaves them to the general law regulating trials before the Session Court—i.e., they will be tried by the court with the assistance of assessors, except in those districts where trial by jury has been introduced by an order of Government.

**Sect. 79.** *Appeal from conviction by Magistrate.*—Any European British subject who is convicted by a competent Magistrate of any offence may appeal either to the Court of Session or to the High Court.

**Note.**—See last clause of Sect. 274.

**Sect. 80.** *Appeal from conviction by Court of Session.*—Any European British subject who is convicted of any offence by any Court of Session may appeal to the High Court.

**Sect. 81.** *Right of European British Subject under detention to apply for order to produce his Person.*—*Procedure.*—Any European British subject who is detained in custody by any person, and who considers such detention unlawful, may apply to the High Court which would have jurisdiction over him in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the said High Court to abide such further order as may

be made by it. The High Court, if it thinks fit, may, before issuing such order, inquire on affidavit, or otherwise, into the grounds on which it is applied for, and grant or refuse such application, or it may issue the order in the first instance, and when the person applying for it is brought before it, it may make such further order in the case as it thinks fit after such inquiry as it thinks necessary.

The High Courts may issue such orders throughout the territories over which they have jurisdiction and over such other places as the Governor-General in Council may direct.

**Sect. 82.** *Power of High Courts as to issue of writs.*—Neither the High Courts nor any Judge of such High Courts shall issue any writ of *habeas corpus*, *mainprise*, *de homine replegiando*, nor any other writ of the like nature beyond the Presidency towns.

**Note.**—In the case of Amir Khan, 6 Ben. L.R. 392, Norman, J., held that the High Courts possessed the power of issuing writs of *habeas corpus* into the Mofussil not only in relief of European British subjects, but also on behalf of others. On another application in the matter of the same prisoner, *ib.* 456, the same judge ruled that the High Court has no power to issue a writ of *mainprise*. Sect. 82 confines the powers of the High Court to issue any writ of a like nature to the limit of the Presidency towns, and although Sect. 81 provides another remedy for European British subjects wrongly detained in the Mofussil, yet no provision is made by this Act for any other persons who may be wrongly detained outside the limits of the Presidency towns.

**Sect. 83.** *Procedure on Claim of European British Subject to be dealt with as such.*—When any person claims to be dealt with as a European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial, and such Magistrate shall on such statement decide whether he is or is not a European British subject, and shall deal with him accordingly, and if any such person is dissatisfied with such decision, the burden of proving that it was wrong shall be upon him. If the Magistrate decide that the accused person is not a European British subject, the trial shall proceed, but such decision shall form a ground of appeal.

**Sect. 84.** *Failure to plead status a waiver.*—If a European

British subject does not claim to be dealt with as such before the Magistrate before whom he is tried or committed, he shall be held to have waived his privilege as such European British subject.

If the Magistrate has reason to believe that any person brought before him is a European British subject, it is his duty to ask him whether he is one or not.

**Sect. 85.** *Trial of Person not a European British Subject under this Chapter.*—If a person who is not a European British subject is dealt with as such, and does not object, the proceeding shall be valid.

**Sect. 86.** *Procedure of High Courts.*—All High Courts shall deal with proceedings against European British subjects outside of the Presidency towns in the manner in which they are empowered by this Act or by any other law in force for the time being to deal with the proceedings of Magistrates outside the Presidency towns, and not according to the law of England relating to the dealings of the superior Courts in England with the proceedings of the Justices of the Peace in England.

The High Courts shall have the same powers with respect to the inquiries and charges against European British subjects as Courts of Session have with respect to inquiries and charges against other persons.

**Sect. 87.** *Proceedings against European British Subjects to be regulated by this Act.*—All Magistrates and Courts of Session proceeding against European British subjects under this chapter, shall proceed under the provisions of this Act and not according to the law of England relating to Justices of the Peace, and all the provisions of this Act, not inconsistent with the provisions of this chapter, shall apply to such proceedings.

**Sect. 88.** *Place of Confinement.*—European British subjects sentenced to imprisonment, shall be confined in such places as the Local Government may either specially or generally appoint.

**Note.**—A European British subject in the Mofussil, convicted under the provisions of this chapter, appealed to the High Court on the ground that the magistrate had no power to try the case, the Governor-General not having power under 24 & 25 Vict. c. 67, to subject a European British subject to any jurisdiction other than that of the High Court, and the provisions of the Criminal Pro-

cedure Code under which the prisoner had been convicted being therefore *ultra vires*. But it was held that the jurisdiction of the High Court, as given by the letters-patent, is subject to the legislative powers of the Governor-General in Council, and therefore the magistrate had jurisdiction to try the case.—Reg. v. Meares, 14 B.L.R. Ap. C.J. 106, and 22 W.R. Crim. 54.

Query, whether local legislatures have power to enact that European British subjects shall be punishable by magistrates on summary conviction for offences newly created by the local legislature.—Reg. v. Donoghue, 5 Mad. H.C.R. 277.



## PART III.

### OF THE POLICE.

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#### CHAPTER VIII.

##### OFFENCES OF WHICH INFORMATION MUST BE GIVEN TO THE POLICE, AND DUTY OF THE PUBLIC.

**Sect. 89 (138).** *All persons to give information of certain offences.*—Every person aware of the commission of any offence made punishable under Sects. 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, or 460 of the Indian Penal Code, shall in the absence of reasonable excuse, the burthen of proving which shall lie upon such person, give information of the same to the nearest Police Officer or Magistrate.

**Note.**—This section differs in several respects from Sect. 138 of the old Code. In the first place, all the sections of the Penal Code before Sect. 382 were not enumerated in the old Code; in the second place, the limitation, “whenever he shall have reason to believe that, if such information be withheld, the person who committed the offence may not be brought to justice, or may have his escape facilitated,” is left out, and in its place is inserted “in the absence of reasonable excuse;” and, thirdly, the burden of proving the existence of reasonable excuse is thrown upon the person alleging it.

Sects. 121-126 relate to the waging of war against the Queen, and other offences against the State.

Sect. 130 relates to aiding the escape of, rescuing, or harbouring a prisoner of State or war.

Sects. 302-304 relate to murder and culpable homicide not amounting to murder.

Sect. 382 provides for theft, preparation having been made to cause death, &c.

Sects. 392-399 relate to robbery and dacoity, and attempts to commit the same.

Sect. 402 refers to assembly for the purpose of committing dacoity.

Sects. 435 and 436 relate to mischief by fire or explosive substances.

Sects. 449 and 450 relate to house-trespass in order to the commission of an offence punishable with death or transportation for life.

Sects. 456-460 relate to lurking house-trespass or house-breaking by night in simple and aggravated forms.

**Sect. 90.** *Landholders and others bound to report certain matters.*—Every Village Headman, Village Watchman, owner or occupier of land, or the agent of any such owner or occupier, and every Native officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, is bound forthwith to communicate to the nearest Magistrate, or to the officer in charge of the nearest Police-station, any information which he may obtain respecting—

(a) The residence of any notorious receiver or vendor of stolen property at the village of which he is headman or watchman, or in which he owns or occupies land, or collects rent or revenue, as the case may be ;

(b) The resort to any place within the limits of such village of any person or persons known or reasonably suspected of being a thug or robber ;

(c) The commission or intention to commit suttee or other non-bailable offence at or near such village ;

(d) The occurrence of any sudden or unnatural death.

**Sect. 91 (82).** *All Persons to assist Magistrate and Police in certain cases.*—Every person is bound to assist a Magistrate or Police officer demanding his aid in the prevention of a breach of the peace,

Or in the suppression of a riot or an affray,

Or in the taking of any other person whom such Magistrate or Police officer is authorized to arrest.

## CHAPTER IX.

## OF ARREST WITHOUT WARRANT.

**Sect. 92 (100).** *When Police may arrest without warrant.*—A Police officer may, without orders from a Magistrate, and without a warrant, arrest,—

*Firstly*, Any person who in the sight of such Police officer commits a cognizable offence.

*Secondly*, Any person against whom a reasonable complaint has been made or a reasonable suspicion exists of his having been concerned in any such offence.

*Thirdly*, Any person against whom a hue and cry has been raised of his having been concerned in any such offence.

*Fourthly*, Any person who has been proclaimed either under this Act, or in a District or Police Gazette, or notification.

*Fifthly*, Any person found with property in his possession which may reasonably be suspected to be stolen property.

*Sixthly*, Any person who obstructs a Police officer while in the execution of his duty, or who escapes from lawful custody; and,

*Seventhly*, Any person reasonably suspected of being a deserter from Her Majesty's Army or Her Majesty's Indian Army.

**Note.**—In the 5th clause of the corresponding section of the old Code the expression was, “any person found with stolen property in his possession;” and under that it was held that the property must be actually stolen property, and not anything which the police officer may imagine to have been stolen.—*Sheo Sarun Sahai v. Mahomed Fazil Khan*, 10 W.R. Crim. 20. The present wording allows a police officer to arrest persons in possession of property which he suspects to be stolen, but it imposes upon the officer the duty of using a reasonable discretion in the matter.

**Sect. 93** (108). *Person charged refusing to give his name and residence.*—Any person known to have committed, or suspected of having committed, an offence for which a Police officer is not authorized to arrest without a warrant, and who refuses on demand of a Police officer to give his name and residence,

or gives a name or residence which there is reason to believe to be false,

may be detained by such Police officer for the purpose of ascertaining the name or residence of such person; and shall, within twenty-four hours, be forwarded to the Magistrate having jurisdiction, unless before that time his true name and residence are ascertained, in which case such person shall be forthwith released.

**Sect. 94** (101). *Arrest of vagabonds.*—An officer in charge of a Police-station may, without orders from a Magistrate, and without a warrant, arrest or cause to be arrested any person found lurking within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

or any person who is a reputed robber, house-breaker, thief, receiver of stolen property knowing it to be stolen,

or who is of notoriously bad livelihood.

**Sect. 95** (102). *Police to prevent certain offences.*—Every Police officer shall prevent, and may interpose for the purpose of preventing, the commission of any cognizable offence.

**Sect. 96** (103). *Information of design to commit such offences.*—Every Police officer receiving information of a design to commit any such offence, shall communicate such information to the Police officer to whom he is subordinate, and to any other officer whom it may concern, to prevent or take cognizance of the commission of any such offence.

**Sect. 97** (104). *Arrest to prevent such offences.*—A police officer knowing of a design to commit any such offence may arrest, without orders from a Magistrate, and without a warrant, the person so designing, if the commission of the offence cannot be otherwise prevented.

**Sect. 98** (105). *Injury to public property.*—A Police officer may, of his own authority, interpose for the prevention of any injury attempted to be committed in his view to any public property, moveable or immoveable,

or to prevent the removal or injury of any public land-mark, or

buoy, or other mark used for navigation. If necessary, such Police officer may detain the person doing such injury according to the provisions of Sect. 93.

**Sect. 99** (106). *Ingress to be allowed into house entered by person of whom Police is in search.*—If there is reason to believe that any person liable to arrest under this chapter without a warrant, of whom a Police officer is in search, has entered into or is within any house or place, it shall be the duty of the person residing in or in charge of such house or place, on the demand of such Police officer, to allow ingress thereto, and all reasonable facilities for a search therein.

**Sect. 100** (107). *Procedure where ingress not obtainable.*—If ingress to such house or place cannot be obtained under Sect. 99, the Police officer authorized to make the arrest shall take such precautions as may be necessary to prevent the escape of the person to be arrested, and send immediate information to any Magistrate having jurisdiction.

If a warrant cannot be obtained without affording such person an opportunity of escape, and there is no person authorized to enter without a warrant on the spot, the Police officer may make an entry into such house or place and search therein.

**Sect. 101** (109). *Person arrested to be taken before Magistrate or officer in charge of Police-station.*—A Police officer making an arrest under this chapter shall, without unnecessary delay, take or send the person arrested before the Magistrate having jurisdiction in the case, or before the officer in charge of a Police-station.

**Sect. 102** (140). *Procedure when Police Officer deposes subordinate to arrest without warrant.*—When any officer in charge of a Police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested by such officer without a warrant, he shall deliver to the Police officer required to make the arrest, an order in writing, specifying the person to be arrested, and the offence for which the arrest is to be made.

The provisions of Sects. 91 and 176-182 (both inclusive) shall apply to every order in writing issued under this section.

**Sect. 103** (141). *Police may pursue offenders into other jurisdictions.*—For the purpose of arresting any person accused of a cognizable offence, a Police officer may pursue any such person into

the limits of the local jurisdiction of another Police officer, whether subordinate to the same Magistrate as himself, or to the Magistrate of any other District, and whether such place be in the same Province or not.

**Sect. 104.** *Detention of offenders attending Court.*—Any person attending a Criminal Court, although not upon an arrest or summons on a complaint made, may be detained by such Court for the purpose of examination, for any offence which from the evidence he may appear to have committed, and may be proceeded against as though he had been arrested or summoned on a complaint made.

When the detention takes place in the course of an inquiry under Chapter XV., or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses reheard.

**Note.**—Magistrates of all classes can act under this section (Sect. 22).

#### *Of Arrest by Private Persons.*

**Sect. 105.** *Arrest by private persons.*—Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence.

**Sect. 106.** *Arrest of deserters from British ships.*—The master or mate of a British merchant ship may, either with or without the assistance of the Police, who are bound to aid, if so required by such master or mate, arrest seamen or apprentices duly engaged under the Statute 17 & 18 Vict. c. 104, or other law for the time being in force relating to merchant shipping, who refuse to join, or desert from, the vessel in which they contracted to serve.

Such arrest shall be made only at the request and on the responsibility of such master or mate, and he shall be required by the Police to accompany the arrested person, should he be apprehended, before the Magistrate having jurisdiction; and it shall be the duty of such master or mate to obey such requisition.

**Sect. 107.** *How to proceed with person arrested.*—A private person making an arrest under this chapter shall forthwith make over the person arrested to a Police officer, and, in the absence of a Police officer, shall take such person to the nearest Police-station.

The Police shall deal with such person according to the provisions of Sect. 92 or 93, as the case may be, and shall not arrest or detain him unless he appears to be liable to arrest or detention under the section applicable.

**Sect. 108 (110).** *Offence committed in Magistrate's presence.*—When any offence is committed in the presence of a Magistrate, he may order any person to arrest the offender, and may thereupon commit him to custody, or if the offence is bailable, may admit him to bail.

## CHAPTER X.

### POWERS OF THE POLICE TO INVESTIGATE.

**Sect. 109** (133). *What offences Police officer may investigate.*—An officer in charge of a Police-station may, without order of a Magistrate, investigate any offence cognizable by the Police

**Sect. 110** (133). *What offences Police may not investigate.*—A Police officer may not, without the order of a Magistrate of the first or second class, investigate an offence not cognizable by the police.

A Magistrate of the first or second class may, as provided in Sects. 24 and 26, order the Police to investigate; and, on receipt of an order to investigate a non-cognizable case, a Police officer may exercise the same powers in respect of the investigation as in a cognizable case.

**Note.**—A Magistrate is competent under this section to direct an inquiry by a Police officer into an offence under a local Act.—*In re Prankisto Pal*, 14 W.R. Crim. 41.

**Sect. 111** (134). *Saving of powers vested in Police by special or local law.*—Nothing in Sect. 110 shall be held to interfere with the exercise of any powers vested in a Police officer by any special or local law, or with the performance of any duty which is imposed upon a Police officer by any such special or local law.

**Sect. 112** (139). *Complaint to Police to be in writing.*—Every complaint preferred to an officer in charge of a Police-station shall be reduced into writing, and shall be signed, sealed, or marked by the person making it, and the substance thereof shall be entered in a book to be kept by such officer in the form prescribed by the Local Government.

**Note.**—This section introduces as a new provision that a complaint preferred at a Police-station shall not only be reduced to



writing, but shall also be signed, sealed, or marked by the person making it.

**Sect. 113.** *Complaint in non-cognizable cases.*—If a complaint is preferred to an officer in charge of a Police-station of the commission within his local jurisdiction of an offence which is not cognizable by the Police, the Police officer shall enter the substance of it in the station diary, and shall refer the complainant to the Magistrate.

**Sect. 114** (135). *Upon information, &c., Police officer in charge of station to proceed in person or depute a subordinate.*—If from information or otherwise, an officer in charge of a Police-station has reason to suspect the commission within his local jurisdiction of an offence cognizable by the Police, he shall send immediate intimation to the Magistrate having jurisdiction, and shall proceed in person, or shall depute one of his subordinate officers to proceed to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and apprehension of the offender.

Police officers shall investigate offences committed within the local limits of their jurisdiction, but they may investigate offences committed outside of those limits in cases in which a Magistrate might, under the provisions of Chapter VI., inquire into an offence not committed within his district.

No such proceeding shall at any stage be called in question on the ground that such offence was not committed within such officer's local jurisdiction.

**Sect. 115** (135). *Preliminary inquiry.*—Such Magistrate, on receiving intimation of the commission of any such offence, may at once proceed, or depute any Magistrate subordinate to him, to proceed, to hold a preliminary inquiry into or otherwise to dispose of such case in the manner provided in this Act.

**Sect. 116** (136). *Where local investigation dispensed with.*—Provided that, when any complaint is made against any person by name, and the case is not of a serious nature, the officer in charge of a Police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot, unless such local investigation appears to be necessary.

**Sect. 117** (137). *Where Police officer in charge sees no sufficient ground for investigation.*—Provided that, if it appear to the officer

in charge of a Police-station that there is no sufficient ground for entering on an investigation, or that the immediate apprehension of the accused is not necessary for the ends of justice, he shall not proceed in the case, but shall report the substance of the complaint or information for the orders of the Magistrate having jurisdiction.

Such report shall be submitted through such superior officer of Police as the Local Government shall, by general or special order, in that behalf, appoint. Such superior officer may give such instructions to the officer in charge of the Police-station as he deems fit, and shall, after recording such instructions on such report, transmit the papers without delay to the Magistrate having jurisdiction.

**Sect. 118 (144).** *Police officer's power to summon witnesses.*—An officer in charge of a Police-station, or other officer making an investigation, may, by an order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station, who, from the statement of the complainant or otherwise, appears to be acquainted with the circumstances of any case which such officer is investigating, and such person shall attend as required, and shall answer all questions relating to such case put to him by such officer :

Provided that no person shall be bound to answer any questions tending to criminate himself.

**Sect. 119 (145).** *Oral examination of witnesses by Police.*—An officer in charge of a Police-station, or other Police officer making an investigation, may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Such person shall be bound to answer all questions relating to such case put him by such officer other than questions criminating himself :

No statement so reduced into writing shall be signed by the person making it, nor shall it be treated as part of the record, or used as evidence.

**Note.**—It will be observed that in both these sections (118 and 119), persons summoned by the officer in charge of a police-station are excused from answering any questions criminating themselves. Consequently, if such questions be answered, the person so answering will not be able to take advantage of the provisions of Sect. 132 of the Indian Evidence Act, 1872, which is in the following

terms: "A witness shall not be excused from answering any question as to any matter relevant to the matter in issue, in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate such witness, or that it will expose, or tend, directly or indirectly, to expose such witness to a penalty or forfeiture of any kind: Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer." Criminating answers under Sects. 118 and 119, being voluntary and not compulsory, may subject him to arrest or prosecution, although no use can be made of them as confessions, nor can they be given in evidence, as will be seen from the sections of the Indian Evidence Act, 1872, which follow Sect. 122 of this Code.

If these statements be actually reduced to writing, the writing itself, which cannot be treated as part of the record or used as evidence, may yet be used for the purpose of refreshing memory under Section 159 of the Evidence Act. Therefore the person making the statements may properly be questioned about them; and, with a view to impeach his credit, the Police officer himself, or any other person in whose hearing the statements were made, can be examined on the point under Section 155 of the Evidence Act.—*R. v. Uttamchand Kapurchand*, 11 Bom. H.C.R. 120.

**Sect. 120 (146).** *No inducement to be offered to confess.*—No Police officer or other person shall offer any inducement to an accused person, by threat or promise or otherwise, to make any disclosure or confession, whether such person is under arrest or not.

But no Police officer or other person shall prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

**Sect. 121 (147).** *Police not to record statement or confession.*—No Police officer shall record any statement, or any admission or confession of guilt, which may be made before him by a person accused of any offence:

*Proviso.*—Provided that nothing in this section shall preclude a Police officer from reducing any such statement or admission or confession into writing for his own information or guidance, or from giving evidence of any dying declaration.

**Sect. 122.** *Powers of Magistrates to record statements and confessions.*—Any Magistrate may record any statement made to him by any person, or any confession made to him by any person accused of an offence by any Police officer or other person. Such statements shall be recorded in the manner hereinafter prescribed for recording evidence, and such confessions shall be taken in the manner provided in Sects. 345 and 346, and shall, when recorded, be forwarded to the Magistrate by whom the case is inquired into or tried. No Magistrate shall record any such confession unless, upon inquiry, he has reason to believe that it was made voluntarily, and he shall make a memorandum at the foot of any such confession to the following effect :—

*"I believe that this confession was voluntarily made."*

(Signed) *A. B., Magistrate.*

**Note.**—This section applies to inquiries, *not* during trials, or held with a view to commitment, but to inquiries for the purpose of forwarding confessions when recorded to the Magistrates inquiring into or trying the cases of the accused. The last clause of Sect. 346 does not apply to confessions recorded under this section—*Reg. v. Bai Ratan*, 10 Bom. H.C.R. Ap. Cr. Ju. 166.

Followed in *Reg. v. Amrita Govinda*, 10 Bom. H.C.R. Ap. Cr. Ju. 497, where it was held that a confession not taken in the form of question and answer, and not authenticated by the Magistrate's endorsement as to its accuracy, is inadmissible in evidence, even though no objection should be taken to its reception.

The following sections of the Indian Evidence Act, 1872, lay down rules to be observed with regard to the admission of confessions in evidence :—

**Sect. 24.** A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat, or promise, having reference to the charge against the accused person, proceeding from a person in authority, and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage, or avoid any evil of a temporal nature, in reference to the proceedings against him.

**Sect. 25.** No confession made to a Police officer shall be proved as against a person accused of any offence.

Sect. 26. No confession made by any person whilst he is in the custody of a Police officer, unless it is made in the immediate presence of a Magistrate, shall be proved as against such person.

Sect. 27. Provided that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a Police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Sect. 28. If such a confession as is referred to in Sect. 24 is made after the impression caused by such inducement, threat, or promise has, in the opinion of the Court, been fully removed, it is relevant.

Sect. 29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

Sect. 30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person, as well as against the person who makes such confession.

#### *Illustrations.*

- (a) A and B are jointly tried for the murder of C. It is proved that A said: "B and I murdered C." The Court may consider the effect of this confession as against B.
- (b) B is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said: "A and I murdered C." This statement may not be taken into consideration by the Court as against A, as B is not being jointly tried.

A judge, under these sections, would not be justified in telling a prisoner that if he thought fit to plead guilty the sentence would be lighter.—13 W.R. Crim. Letters, 1.

Confessions are divided by English text-writers into *extra-judicial*,

or those made elsewhere than before a magistrate or in court; and *judicial*, or those made to a magistrate or in court in the due course of legal proceedings. *Extra-judicial confessions* embrace those made as well to private individuals as to the officers of justice, such as constables, police officers, &c. If voluntarily made, they are receivable in evidence after being proved like other facts. With respect to the confession being voluntary, Chief Baron Eyre has said: "A confession forced from the mind by the flattery of hope or by the torture of fear comes in so questionable a shape, when it is to be considered as the evidence of guilt, that no credit ought to be given to it." Where any inducement to confess has been held out to the prisoner by one having authority over him in connection with the prosecution (Sect. 24 of the Indian Evidence Act), the confession will be rejected. The following have been held to be persons in authority within the meaning of the rule: The prosecutor, the master or mistress of the prisoner, where the offence concerns such master or mistress; the officer having the prisoner in charge; the owner of a horse that was stolen; the relations and neighbours of the prosecutor and of the master of the prisoner. The rule holds good if the inducement, though not actually offered by the person in authority, be held out by any one in his presence, and he by his silence seems to sanction its being made. Where the inducement was held out by a person having no authority, it was held admissible.—Archbold's Crim. Pleadings, pp. 239, 240. So, though inducement have been offered, the confession is admissible if, from lapse of time or other cause, it be clear that the improper influence was wholly done away with, and that the confession was in nowise owing thereto.—Sect. 28, Indian Evidence Act. Field on the Indian Evidence Act, pp. 537, 538.

The inducement, to make the confession inadmissible, must refer to a temporal benefit (and have reference to the charge against the accused, so that the accused may suppose that by confessing he will gain some advantage or avoid some evil of a temporal nature in reference to the proceedings against him.—Sect. 24, Indian Evidence Act). Hopes which are referable to a future state merely are not within the principle which excludes confessions obtained by improper influence.—*R. v. Gilham*, R. and M.C.C. 186. So where a prisoner under fourteen years of age, charged with murder, was told by a man who was present when the child was apprehended:

"Now kneel down; I am going to ask you a very serious question, and I hope you will tell me the truth, in the presence of the Almighty," and the prisoner in consequence made a statement, this was held strictly admissible.—*R. v. Wild*, 1 Mood. C.C. 542. *The only proper question is*, whether the inducement held out to the prisoner was calculated to make his confession an *untrue* one; if not, it will be admissible. Was any promise of favour, or any menace or undue terror made use of to induce the prisoner to confess? and if so, was the prisoner induced by such promise or menace to make the confession attempted to be given in evidence? If the judge be of opinion in the affirmative upon both these questions, he will reject the evidence; if, on the contrary, it appears to him, from the circumstances, that *although such promises or menaces were held out*, they did not operate upon the mind of the prisoner, but that his confession was voluntary notwithstanding, and he was not biassed by such impression in making it, the judge will admit the evidence.—See 2 East, P.C. 658; *R. v. White*, 1 Phil. Ev. 406; *R. v. Nute*, 1 Burn's, J., 973 (30th ed.), citing 1 Burn's, J., 688 (24th ed.), Archbold's Criminal Pleadings and Cases (18th ed.), p. 242. And it is laid down in Russell on Crimes that "the object of the rule relating to the exclusion of confessions is to exclude all confessions which may have been procured by the prisoner being led to suppose that it will be better for him to admit himself to be guilty of an offence which he really never committed."—By Id. Campbell, C.J., *Reg. v. Scott*, D. and B. 47; and by Littledale, J., in *R. v. Court*, 7 C. and P. 486. In determining, therefore, whether a confession be admissible or not, "the only proper question is, whether the inducement held out to the prisoner was calculated to make his confession an untrue one."—*R. v. Thomas*, 7 C. and P. 345; by Coleridge, J., 3 Russ. on Crimes, 367.

So the following statements made to prisoners have been held to render confessions thereon inadmissible: "You had better split, and not suffer for all of them." "If any other person had to do in the case, it is better you should tell." "It would have been better if you had told at first." As to these words, "It would have been better if you had told at first," Gurney, B., said: "That is an inducement. It amounts to this, that if it would have been better then, it would be better now. I think it hardly safe to admit the evidence after that."—3 Russ. 369.

Mr Roscoe lays down that "the wisest course for policemen and others to adopt is to say nothing to the prisoner, either by way of advice, caution, or interrogation."—See *Nobodip Chundra Goswami*, 1 B.L.R. O.S. Crim. Rul. 15; Field on the Indian Evidence Act, 539; Sects. 120 and 134 of the Criminal Procedure Code; and Sects. 25 and 26 of the Indian Evidence Act.

A free and voluntary confession of guilt made by a defendant, whether under examination before magistrates or otherwise, if duly made and satisfactorily proved, is sufficient at once to warrant a conviction without corroborative evidence *aliunde*.—Archbold's Crim. Cases (18th ed.), p. 249; *R. v. White*, R. & R. 508; *R. v. Tippet*, *id.* 509; *R. v. Eldridge*, *id.* 440; *R. v. Falkner*, *id.* 481; *R. v. Stone*, Dy. 204; *R. v. Francis*, 6 St. Tr. 58; *R. v. Lambe*, 2 Leach, 554; *R. v. Wheelings*, 1 Leach, 311 n. But this must be understood of a direct and positive confession; for admissions by implication are not entitled to the same weight. This is the effect of confessions under English law, but there seems nothing in the Indian Evidence Act to show that the effect of confessions in India under the Indian Evidence Act is not the same. In a case decided before the new Evidence Act came into operation, it was said by the court, "The question for consideration was whether the confession was voluntary and genuine; and if no reasonable doubt arose on these points, the confession was legal, and sufficient proof of guilt."—*Reg. v. Jhari*, 7 W.R. Crim. 41. And as to confessions before committing magistrates, see *Reg. v. Petta Ghazi*, 4 W.R. Crim. 19; *Reg. v. Runjit Sontal*, 6 W.R. Crim. 73. Mr Field, however, in his work on the Indian Evidence Act, p. 540, expresses doubt whether *extrajudicial confessions*, if uncorroborated, are sufficient for conviction.

On Sects. 25, 26, and 27 of the Indian Evidence Act, Mr Fitz-James Stephen, in his introduction to the Act, says that they have been "transferred to the Evidence Act, *verbatim* from the Code of Criminal Procedure Act, 25 of 1861. They differ widely from the law of England, and were inserted in the Act of 1861, in order to prevent the practice of torture by the police for the purpose of extracting confessions from persons in their custody."

A prisoner cannot be convicted upon part of his confession. If his statement be relied upon, it must be taken as a whole: none should be rejected.—*Reg. v. Chokoo Khan*, 5 W.R. Crim. 70; *Reg.*



*v. Greedhari Manji*, 7 W.R. Crim. 29; *Reg. v. Kisto Mundal*, 7 W.R. Crim. 8; *Reg. v. Sheikh Boodhoo*, 8 W.R. Crim. 38.

It is only when a confession is properly made to a magistrate that it can be used as evidence against the prisoner—*Reg. v. Domun Kahar*, 12 W.R. Crim. 82; and it was held under the old Code, that although it is legal to admit in evidence a confession made before any magistrate, yet the practice of taking a prisoner before a magistrate, other than the one having jurisdiction in the case, merely for the purpose of recording a confession, is not generally desirable—*Reg. v. Vahala Jetha*, 7 Bom. H.C. Rep. C.C. 56. But now “any” magistrate is expressly authorised to record a confession of the accused, Sect. 22. The properly-attested confession of a prisoner before a magistrate is sufficient for his conviction without corroborative evidence, notwithstanding a subsequent denial by a plea of not guilty before the Session Court.—*Reg. v. Bhuttan Rujween*, 12 W.R. Crim. 49. In England it has been held that a prisoner’s confession is sufficient ground for a conviction, although there is no other proof of his having committed the offence, or of the offence having been committed, if that confession was in consequence of a charge against the prisoner.—*Rex v. Eldridge*, R. & R. C.C. 44; *Rex v. White*, *ib.* 508; *Rex v. Tippet*, *ib.* 509. In order to give weight to a confession before a magistrate there should be a judicial record of the circumstances under which it was received, showing in whose custody the prisoner was, and how far he was a free agent.—*Reg. v. Kodai Kahar*, 5 W.R. 6.

A police officer cannot relate all he has heard in the course of the investigation of a case, in order to explain how he came to search in a particular place, or to arrest a particular person.—*Reg. v. Pittamber Sirkar*, Calcutta H.C., 2 Madras Jurist, 282. And to make a confession of a prisoner, not in the presence of a magistrate, evidence, the fact discovered must be one which of its own force, independently of the confession, would be admissible in evidence.—*Reg. v. Choda Achenah*, 3 Madras H.C. Rep. 318. Where a police officer obtained certain stolen property from a prisoner by telling him that he could get him off; it was held that the admission was not receivable in evidence.—*Reg. v. Bishoo Manjee*, 9 W.R. Crim. 16.

The confession of a prisoner in one case in which he was convicted cannot be used in evidence against him in another case, unless it is deposed to on oath by the person who took it down, or

by some person who heard it.—*Reg. v. Moonger Bhooyan*, 10 W.R. Crim. 56.

**Sect. 123** (151). *Investigation by Police*.—If the person arrested appears, from the information obtained, to have committed the offence charged, and the offence is not bailable, the officer in charge of the Police-station shall forward him under custody to the Magistrate having jurisdiction, and shall bind over the complainants, if any, and so many of the persons who appear to be acquainted with the circumstances of the case, as may be necessary, to appear on a fixed day before such Magistrate, and to remain in attendance till otherwise directed.

When any subordinate Police officer has made any investigation under this chapter, he shall, if so required by the officer in charge of the Police-station, submit a report of such investigation to him, or he may do so without such requisition, and the officer in charge of the Police-station shall then proceed as if he had made the investigation himself.

**Note**.—A magistrate of the third class can try a person for an offence within his jurisdiction, who has been forwarded to him by a police officer under this section; for, though the fact of Sects. 25 and 27 conferring power specifically on magistrates of the first and second class to entertain complaints and receive police reports, and Sect. 23 not specifically giving magistrates of the third class power to entertain police reports, might at first lead to the inference that magistrates of the third class have no power to entertain police reports, an examination of Sect. 141 shows that the specific power given in Sects. 25 and 27 refers only to that class of reports which operate as complaints, or on which process is to be issued as on a complaint.—*Reg. v. Lala Shambhu*, 10 Bom. H.C.R. 70.

In a case made over to the police for investigation, and returned to the magistrate, the prosecutor and his witnesses should be required to enter into recognizances to attend and give evidence before the magistrate. The recognizances of the accused should specify the particular day on which he should be in attendance on the court—*Reg. v. Poaran Jalaka*, 11 W.R. Crim. 47; but if bound over to appear when called upon, both the accused and his sureties are entitled to a reasonable notice—4 Madras H.C. Rep. App. 45.

**Sect. 124** (152). *Accused not to be detained more than twenty-four hours*.—No Police officer shall detain an accused person in custody

for a longer period than, under all the circumstances of the case, is reasonable; and such period shall not, in the absence of the special order of a Magistrate, whether having jurisdiction to inquire into or try the case or not, exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

If the investigation has not been completed within twenty-four hours, and no such special order has been passed, and if there are grounds for believing that the accusation is well founded, the officer in charge of the Police-station shall forward the accused person to the Magistrate having jurisdiction, with a statement of the offence for which he has been arrested.

A Magistrate authorizing detention under this section shall record his reasons for so doing.

If such order be given by a Magistrate other than the Magistrate of the district or of a division of a district, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is subordinate.

The order of a Magistrate sanctioning the detention by the police of an accused person for an *indefinite* period is illegal. At the expiration of twenty-four hours from arrest, the accused *must* be brought before a Magistrate, who can then remand for a period not exceeding fifteen days under Sect. 224.—Reg. *v. Surkya Valad Dhakur*, 5 Bombay H.C. Rep. C.C. 31; Reg. *v. Baswram Dass*, 19 W.R. Crim. 36. All magistrates can act under this section (Sect. 22).

**Sect. 125** (153). *Cases of deficient evidence*.—If it appears to the officer in charge of the Police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the transmission of an accused person to the Magistrate, such officer shall release the accused person on bail, or on his own recognizance, to appear when required, and shall submit a report of the case for the orders of the Magistrate having jurisdiction. Such report shall be submitted through the superior officer of Police, mentioned in Sect. 117, who may, pending the orders of the Magistrate, give instructions as to the conduct of the investigation.

**Sect. 126** (154). *Daily record of proceedings*.—A Police officer making an investigation under this chapter, shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the complaint or other information reached him, the

time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained by his investigation.

Any Criminal Court may send for the Police diaries of a case under inquiry or trial in such Court, and may use such diaries to aid it in such inquiry or trial. Neither the prisoner nor his agents shall be entitled to call for them, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the Police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police officer, the provisions of the law relating to documents used for such purposes shall apply to them.

**Note.**—The old Code provided expressly that “such diary shall not be evidence of the facts stated therein, except as against the police officer who made it;” and it was thereon ruled that such a diary could not be used as corroborative evidence even.—Reg. v. Thakoor Chand Surma, 13 W.R. Crim. 22. But under the present section any criminal court, and not only the magistrate of the district, may call for such diary and use it “to aid it in such inquiry or trial;” and this, coupled with Sect. 35 of the Indian Evidence Act, 1872, which enacts that “an entry in any public or *other official* book, register, or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact,” leaves it in doubt whether such a diary may now be used to corroborate a police officer’s evidence, or whether it can only be used for the purpose of refreshing his memory, or else of contradicting his evidence. As to documents used by witnesses to refresh their memory, or by the court to contradict evidence given, see Sects. 145, 159 to 164, of the Evidence Act.

**Sect. 127 (155).** *Report of Police officer.*—The investigation shall be completed without unnecessary delay, and, as soon as it is completed, the police officer making the same shall forward to the Magistrate having jurisdiction a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the complaint, and the names of the persons who appear to be acquainted with the circumstances of the case, and shall also

send to such Magistrate any weapon or article which it may be necessary to produce before him.

The Police officer shall state whether the accused person has been forwarded in custody, or has been released on bail or on his own recognizance.

If the accused person be detained in custody, the Police officer shall state the fact and the cause of his detention.

**Sect. 128** (156). *Bail*.—A person accused of any non-bailable offence shall not be admitted to bail, if there appear reasonable ground for believing that he has been guilty of the offence imputed to him.

But a person accused of any bailable offence shall be admitted to bail, if sufficient bail be tendered for his appearance before the Magistrate having jurisdiction in respect of the offence.

**Sect. 129** (157). *Bail not to be excessive*.—The bail to be taken under Sect. 128 shall not be excessive; and the surety or sureties shall bind himself or themselves under a specific penalty to produce the accused person before the Magistrate on or before a fixed day, and from day to day, until otherwise directed, to answer the complaint.

**Note**.—Except in the cases referred to in the first portion of Sect. 128, the acceptance and amount of bail have nothing to do with the guilt or innocence of the person charged, but simply with the chance of his surrendering himself when required, which is made up of two ingredients—the nature of the offence, and the position in life of the accused. For further remarks on bail, see the chapter on that subject.

**Sect. 130** (158). *Recognizances of Prosecutor, &c.*—Every complainant and other person acquainted with the facts and circumstances of the case whose attendance before the Magistrate having jurisdiction is deemed necessary by the Police officer making the investigation, shall execute a recognizance in the Form (F) given in the second schedule hereto, or to the like effect, for appearance before the Magistrate having jurisdiction in respect of the offence on a fixed day.

If the Court of the Magistrate of the District or of a Magistrate of a division of a District be inserted in the bond, it shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided notice be given to such complainant or witness.



charge of Police-stations shall report to the Magistrate of the district, or the Magistrate of a division of a district, the cases of all persons apprehended within the limits of their respective stations, or detained under Sect. 93, whether such persons have been admitted to bail or otherwise, under whatever law such persons may have been arrested.

*Discharge of Person apprehended.*—No person who has been apprehended by a Police officer shall be discharged, except on bail or on his own recognizance, or under the special order of a Magistrate.

**Sect. 133 (161). *Unnatural and Sudden Deaths.***—The officer in charge of a Police-station, on receiving notice or information of the unnatural or sudden death of any person, shall immediately give information thereof to the nearest Magistrate duly authorized, and shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and report the apparent cause of death, describing any mark of violence which may be found on the body, and stating in what manner or by what weapon or instrument such mark appears to have been inflicted.

The report shall be signed by such Police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the Magistrate of the District or to the Magistrate of the division of a District.

When there is any doubt regarding the cause of death, the Police officer shall forward the body, with a view to its being examined, to the nearest Civil Surgeon or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of putrefaction on the road.

In the Presidencies of Madras and Bombay, the Head of the village may also in like manner make the investigation and report to the nearest Magistrate duly authorized.

**Note.**—As to the appointment of coroners within the local limits of the ordinary original civil jurisdiction of the High Courts at Fort-William, Madras, and Bombay, see Act iv. of 1871. The form of inquisition given in Act iv. of 1871 may be consulted in determining the form in which a report under this section should be put in.

This investigation should be made at the earliest possible time,

and the report should be complete and full. In Lower Bengal the *post mortem*, in all cases of violent or suspicious death, occurring at a division of a district where there is a sub-assistant surgeon or European medical officer, is to be held by such officer. The following extracts from Mr Taylor's 'Medical Jurisprudence,' show the *post mortem* appearances in some cases of violent death. But too great reliance should not be placed on these in reporting the cause of death; and those making the investigation should not, because they have themselves formed a definite opinion as to the cause of death, neglect to report most fully the state and appearance of the body.

In cases of drowning, Mr Taylor says:—"If the body has remained in the water only a few hours after death, and the inspection has taken place immediately on its removal, the skin will be found cold and pallid, sometimes contracted (Ed. Med. and Surg. Jour., Jan. 1837). A contracted state of the skin when found certainly furnishes strong evidence of the body having gone into the water living. The skin is often covered to a greater or less extent by livid discolorations. The face is pale and calm, with a placid expression, the eyes are half open, the tongue swollen and congested—frequently pushed forward to the inner surface of the lips, sometimes indented, or even lacerated by the teeth; and the lips, together with the nostrils, are covered with a mucous froth, which oozes from them. The body and limbs of a person recently drowned are usually found relaxed; but cadaveric rigidity appears to come on quickly in cases of drowning, and the body is often stiffened in the convulsed or distorted attitude which it may have had at the time of death. Gravel, sand, and weeds, or other substances, may be found located within the hands or nails of drowned persons, and the fingers excoriated in the efforts, common to those drowning, to grasp any object within reach. The stomach will commonly be found to contain water, the absence may suggest a rapid death. But the appearances in those drowned vary greatly. It may be laid down as a general rule that the recently dead body unclothed is, when left to itself, *heavier* than water, and sinks when immersed. Any substances found in the hands or nails of a person drowned should be carefully removed and preserved."—Taylor's Med. Juris., 625-630, 643.

In cases of hanging, the appearances are:—"Lividity and swell-



ing of the face, especially of the lips, which appear distorted; the eyelids swollen, and of a bluish colour, the eyes red, projecting forwards, and sometimes partially forced out of their cavities; the tongue enlarged, livid, and either compressed between the teeth, or sometimes protruded; the lower jaw retracted, and a bloody froth sometimes existing about the lips and nostrils. There is a deep and ecchymosed impression around the neck, indicating the course of the cord, the skin being occasionally excoriated. . . . There are also commonly circumscribed patches of ecchymosis (appearance of livid spots), varying in extent, about the upper part of the body and the upper and lower limbs, with a deep livid discoloration of the hands; the fingers are generally much contracted or firmly clenched, and the hands and nails, as well as the ears, are livid: the urine and fæces are sometimes involuntarily expelled at the moment of death. But such appearances are not likely to be found in cases of suicidal hanging. In these the face is generally pale, and the mark on the neck a simple depression in the skin, usually without ecchymosis, and acquiring a horny or parchment colour only after some time. The tongue is not always protruded. Though, as a general rule, in violent hanging or strangulation the hands are clenched, this appearance may not always be found, as sometimes in cases in which the constriction has been gradually produced."—Taylor's Med. Juris., 654.

"The *post mortem* appearances in cases of strangulation are similar to those of hanging, but the injury done to those parts about the neck is commonly greater. If much force has been used in producing the constriction, the windpipe, with the muscles and vessels in the forepart of the neck, may be found cut or lacerated, and the vertebræ of the neck may be fractured."—Taylor's Med. Juris., 674.

"In cases of suffocation there are rarely any considerable marks of violence externally. When the body has become perfectly cold, there may be patches of lividity diffused over the skin, but these are not always present. The lips are livid, the skin of the face and neck may be pale, or present a dusky violet tint, with small patches of ecchymosis. The eyes are congested, there is a mucous froth about the lips and mouth. The mouth, throat, and parts about the windpipe should be carefully examined for foreign substances."—Taylor's Med. Juris., 698.

In cases of poisoning, the *post mortem* appearances are too diverse

to be given here ; but where it is suspected that a death has occurred by poisoning, the following circumstances should be carefully noted :  
 “(1.) The exact time of death, if known, to determine how long a period the person has survived after having been first attacked with the suspicious symptoms. (2.) The attitude and position of the body. (3.) The state of the dress and surrounding objects ; bottles, paper-packets, weapons, or spilled liquids lying about should be collected and preserved. (4.) Any vomited matter near the deceased should be preserved, and it should be observed whether vomiting has taken place in a recumbent attitude or not. The time that the deceased last ate or drank should also, if possible, be determined, and how soon after death ensued, poison being generally administered in food, medicine, or drink.”—Taylor’s Med. Juris., 153.

The greatest possible care should be taken in preserving anything supposed to be, or to contain, the poison used for effecting the death. Such matter or fluid should, at the earliest opportunity, be sealed up in a bottle or vessel for analysis, so that tampering with it is rendered impossible, such bottle or vessel being first carefully cleaned, so that no question may be raised after analysis, as to the possibility of any foreign substance or liquid having become mixed with the matter or fluid in question. If such a question be raised, and there is no proof that such foreign substance or liquid is not present, the analysis may be rejected. On this Mr Taylor says :—  
 “It is necessary to observe that all legal authorities vigorously insist upon proof being adduced of the identity of the vomited matter or other liquids taken from the body of a deceased person when poisoning is suspected. Supposing that during the examination the stomach and viscera are removed from the body, they should never be placed on any surface or in any vessel until it is first ascertained that the surface or vessel is perfectly clean. If this point be not attended to, it will be in the power of counsel for the defence to raise a doubt in the minds of the jury whether the poisoning substance might not have been accidentally present in the vessel used. This may be regarded as a very remote presumption, but, nevertheless, it is upon technical objections of this kind that acquittals follow in spite of the strongest presumptions of guilt. This is a question for which every medical witness should be prepared, whether he is giving evidence at a coroner’s inquest

or court of law. Many might feel disposed to regard matters of this kind as involving unnecessary nicety and care; but if they are neglected, it is possible that a case may be at once stopped, so that the care subsequently bestowed upon a chemical analysis will be labour thrown away. Evidence of the presence of poison in the contents of a stomach was once rejected at a trial for murder, because they had been hastily thrown into a jar borrowed from a neighbouring grocer's shop, and it could not be satisfactorily proved that the jar was clean, and entirely free from traces of poison (in which the grocer dealt) when used for that purpose."—Taylor's Med. Juris., 155, 156.

**Sect. 134.** *Power to summon persons.*—An officer in charge of a Police-station may, by an order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Any person so summoned shall be bound to attend and to answer all questions (other than questions which would criminate him).

If the facts do not disclose a cognizable offence to which Sect. 127 is applicable, such persons shall not be required by the Police officer to attend a Magistrate's Court.

**Sect. 135.** *Inquiry into cause of such death by nearest Magistrate.*—The nearest Magistrate duly authorized may hold an inquiry into the cause of any such death, either instead of or in addition to the investigation held by the Police officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence, although no specific charge has been made against any person. The Magistrate holding such an inquiry shall record the evidence taken upon it in any of the manners hereinafter prescribed, according to the circumstances of the case.

**Note.**—These two sections are new. Sect. 134 extends to police officers holding inquests, the powers given to them for the purpose of holding a preliminary inquiry.

Magistrates of the district and magistrates of the first and second class in charge of divisions of districts, under Sect. 40, possess the power of holding inquests, Sects. 28, 30; upon all other magistrates of whatever class the power can be specially conferred, Sects. 23, 25, 27. Sect. 32 further provides that if any magistrate not being

empowered on that behalf holds an inquest, his proceedings shall not be set aside on the ground simply that he was not so empowered.

**Sect. 136** (162). *Absence of officer in charge of Police-station.*—The powers to be exercised by an officer in charge of a Police-station under this chapter shall be exercised, in the event of his absence from the station-house or of his illness, by the Police officer next in rank present at the Police-station, above the rank of a constable.

**Sect. 137.** *Powers of superior officers of Police.*—Officers of Police superior in rank to officers in charge of a Police-station may exercise the same powers throughout their local jurisdictions as may be exercised by officers in charge of Police-stations within the limits of such stations.

**Sect. 138.** *Assistant District Superintendent of Police may exercise powers of District Superintendent.*—For the purposes of this Act, an Assistant District Superintendent of Police may exercise any of the powers of a District Superintendent of Police, subject to the control of such District Superintendent of Police, or, in the absence of the District Superintendent of Police and the Assistant District Superintendent, the senior officer of Police on the spot may be directed by the Magistrate of the District to exercise the powers of a District Superintendent of Police.

# PART IV.

## OF PROCEEDINGS TO COMPEL APPEARANCE.

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### CHAPTER XI.

#### OF COMPLAINTS TO A MAGISTRATE.

**Sect. 139 (64).** *Processes.*—Proceedings to compel the appearance before a Magistrate of persons accused or suspected of offences who have not been arrested without warrant, may be by summons or by warrant.

**Sect. 140 (65).** *When summons or warrant may be issued.*—A summons or a warrant may be issued—

(a) Upon a report by the police under Chapter X.; but if the person complained of is already in custody, no complaint, summons, or warrant is necessary.

(b) Upon information or report by a Police officer as a non-cognizable offence. Such information or report shall be regarded as a complaint.

(c) Upon a complaint by a private person. Any person acquainted with the facts of a case may make a complaint.

(d) Upon suspicion entertained by a Magistrate that an offence has been committed.

**Note.**—The provisions of this section set at rest a question which has repeatedly arisen in the Court—*i.e.*, what is necessary to be done before a magistrate can issue a summons or warrant? As Sect. 34 further provides that if any magistrate, not being by law empowered on that behalf, entertains a case without a complaint,

his proceedings shall be null and void, it is necessary that the provisions of this section should be strictly followed.

(a) Provides that in cases in which arrest can be made by the police without a warrant, and in which they have already made an investigation, the report of such investigation shall be a sufficient authority for the issue of a summons or warrant against a person not in custody; but if they have already exercised their right of arrest, then of course neither a warrant nor a summons is necessary to enable them to bring the accused before a magistrate; and it would also seem from the use of the words "no complaint is necessary," that there is no need of a report in such a case unless called for by a magistrate, as the report seems to stand in the place of a complaint.

(b) Enacts that in cases in which the police cannot arrest without a warrant, Sect. 4, a warrant or a summons may be issued upon the information or report of a police officer. The report can only be one made under the provisions of Sect. 110 by the orders of a magistrate of the first or second class, as only under that section can a police officer investigate and report upon a non-cognizable offence; and the case of *Reg. v. Jafar Ali*, 8 Bombay H.C. Rep. C.C. 113, has decided that the word "report" used in Sect. 66 of the old Code does not mean *any* communication made by a police officer, but a formal and legal report. This clause does not, however, define the meaning of the word "information"—whether it is to be a mere oral statement, or an oral statement given upon oath, or one upon oath recorded in writing. The practice in England is ordinarily to issue a summons on a verbal statement, but not to issue a warrant except on a sworn information, ordinarily made by a person acquainted with some of the principal facts. The provision that such information or report shall be regarded as a complaint overrules the case of *Reg. v. Jafar Ali*, 8 Bombay H.C. Rep. C.C. 113, on that point.

Clause (c) contains the substance of Sect. 66 of the old Code, with the addition that "any person acquainted with the facts of a case may make a complaint." From this addition it would appear that a complaint should not be made on "information and belief" only, but that some person or persons who are actually and personally acquainted with the facts of the case should depose to them.

Clause (d) allowing a magistrate to act upon "suspicion that an

offence has been committed," explains and somewhat alters the expression in Sect. 68 of the old Code, which gives a magistrate jurisdiction over "any offence which has come to his knowledge," because that phrase has been held to refer to legal knowledge, i.e., personal knowledge, or knowledge acquired by information on oath, in cases of *Reg. v. Surrendro Nath Roy*, 13 W.R. Crim. 27; and 5 Ben. L.R. 274; and *in re Mahesh Chundra Bannerjee*, 4 Ben. L.R. App. 1, which are both consequently overruled, while the decision in *Bisseshur Roy v. Hurpeshad Singh*, 11 W.R. Crim. 1, to the contrary effect, has been confirmed.

**Sect. 141 (66).** *Who may entertain complaints.*—The Magistrate of the District, any Magistrate of a division of a District, or any Magistrate duly empowered in that behalf in any case which he is competent to try or to commit for trial, may entertain a complaint of an offence, whether preferred directly by the complainant, or on report of a Police officer, and may issue process in the manner hereinafter prescribed to compel the appearance of persons accused of such offences.

Any Magistrate to whom any case is duly referred, by any Magistrate duly empowered to make such reference, may dispose of such case.

A complaint or a Police report gives jurisdiction to a competent Magistrate to inquire into or try any offence covered by the facts complained of or reported, and also to try or commit for trial any person who, at the time when the complaint or report is made, or subsequently, appears to have committed the offence disclosed.

**Note.**—Although this is referred to as representing Sect. 66 of the old Code, a reference to that section will show that it contains only a portion of that section, and even this has been enlarged by the addition of the clauses with reference to the effect of reference and the effect of a complaint or report being made to a magistrate.

Magistrates of the first, second, and third classes may be authorized to entertain complaints of offences in cases in which they have jurisdiction to try or commit for trial, Sects. 23, 25, 27; but if a magistrate, not being empowered by law in that behalf, entertains a complaint, or receives a police report, his proceedings will not be set aside on the ground that he was not so empowered, Sect. 32. The reference of cases is governed by the provisions of Sect. 44.

The last clause of this section is a recognition of the ruling in the

case of *Kalidas Bhattacharjee v. Mohendronath Chatterjee*, 12 W.R. Crim. 40, in which it was held that a magistrate is not bound to adhere to any particular section of the law which may be mentioned in the complaint, but may apply any section which he thinks applicable to the facts of the case, so long as the parties are not misled, the defendant has a proper opportunity of answering the charge, and the right procedure is adopted.

A complaint of a public servant, as defined in the Indian Penal Code, a municipal officer, or an officer or servant of a railway company, is exempt from duty for court fees, Act vii. of 1870, s. 19, cl. xviii. Sect. 21 of the Indian Penal Code defines the word public servant. An application or petition containing a complaint or charge of any offence other than an offence for which police officers may, under the Criminal Procedure Code, arrest without warrant, when presented to a Criminal Court, must have a stamp of the value of eight annas, Act vii. of 1870, sch. ii. number i.; and a fee of eight annas is payable where a written petition has not been presented, but the first or only examination of the complainant has been reduced to writing under the provisions of the Criminal Procedure Code, unless the court thinks fit to remit such payment, Act vii. of 1870, s. 18. Where a conviction against the accused person follows on such application or complaint, or on such examination of the complainant being reduced into writing, the court must order payment by accused to the complainant of the fee paid on such application or petition in addition to any penalty imposed on the accused, Act vii. of 1870, s. 31.

**Sect. 142 (68).** *Who may act without complaint.*—The Magistrate of the District,

any Magistrate of a division of a District,

or any Magistrate duly empowered in that behalf, in any case in which he is competent to try or commit for trial,

may, without any complaint, take cognizance of any offence which he suspects to have been committed, and may issue process in the manner hereinafter prescribed to compel the appearance before him of persons whom he suspects to have committed any such offence.

Nothing in this or in the last preceding section shall be held to authorize a Magistrate to take cognizance of a case without complaint, when the offence falls under chapters 19, 20, or 21, of the



Indian Penal Code; nor to entertain a complaint, or to take cognizance without complaint, of an offence without sanction, where such offence, by any law in force, may not be entertained without sanction.

**Note.**—Magistrates of the first and second class may be authorized to act without a complaint, Sects. 25, 27. Chapter 19 of the Indian Penal Code relates to criminal breaches of contract of service; chapter 20 to offences relating to marriage; and chapter 21 to defamation. The provisions for the giving of sanction for the prosecution of certain offences, and the effect of such sanction, will be found, *post*, Chap. 35. In the case of *Mahesh Chandra Banerjee*, 4 Ben. L.R. 1, it was held that a warrant issued under this section is a warrant of arrest under Sect. 159, and is only for the purpose of bringing an accused person before a magistrate. It is not a warrant for commitment, and does not authorize detention longer than is necessary for production before the magistrate. For further detention there must be a fresh warrant, under 303, charging the prisoner with some offence on evidence taken in the presence of the accused.

**Sect. 143.** *Who may commit for trial.*—The Magistrate of the district,

any Magistrate of a division of a District,  
any Magistrate of the first class, or  
any Magistrate duly empowered in that behalf,  
may commit any person to the Court of Session for any offence triable by such court.

**Note.**—Magistrates of the second and third class may be authorized to commit for trial, Sects. 23, 25. By Sect. 33, a committal by an unempowered magistrate is not necessarily bad.

**Sect. 144** (66). *Examination of complainant.*—When, in order to the issuing of a summons or a warrant against any person for any offence a complaint is made to a Magistrate, such Magistrate, if he is competent to receive such complaint, shall examine the complainant.

The examination shall be reduced into writing in a summary manner, and signed by the complainant, and also by the Magistrate.

When the complaint has been made by petition, and the Magistrate neglects to examine the complainant, the trial of the person accused shall not be set aside on this ground.

**Sect. 145.** *Procedure by Magistrate not empowered to hear complaint.*—If the Magistrate be not competent to receive the complaint, he shall refer the complainant to a Magistrate having jurisdiction.

**Sect. 146.** *Postponement of issue of process.*—If the Magistrate sees cause to distrust the truth of a complaint, he may postpone the issuing of process for compelling the attendance of the person complained against, and may direct a previous inquiry or investigation to be made into the truth of the complaint, either by means of any officer subordinate to such Magistrate, or of a local Police officer, or in such other mode as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

If such inquiry or investigation is made by means of some person other than an officer exercising any of the powers of a Magistrate or a Police officer, such person shall exercise all the powers conferred by this Act on an officer in charge of a Police-station, except that he shall have no power to make an arrest.

**Note.**—The “previous inquiry or investigation” is an inquiry or investigation before the accused is brought before the court on a warrant.—*Ramkant Sircar v. Jadeb Chunder Dass Byraji*, 21 W.R. Crim. 44.

The words, “nothing contained in this section shall prevent the magistrate from at once dismissing the complaint, if in his judgment there is no sufficient ground for proceeding with it,” appeared in the corresponding section of the old Code; and on that section it was held that it was against the law for a magistrate to throw out a complaint only on the strength of reports made to him by police officers to whom the case has been referred without first examining the complainant.—*In re Hurruk Chand Nowlaka and others*, 8 W.R. 12, and 2 Madras Jurist, 242, *Berodokant Mookerjee v. Kalli Bhuttercharji*, 9 W.R. Crim. 21.

A charged B before a Magistrate with wrongful confinement of her brother. Previous to the petition the charge had been investigated by the police and reported to be false. The Magistrate, without recording the complaint under 66, sent for the Police-papers, and under this section dismissed the case. It was held that the proceedings were illegal, and that the Magistrate was bound under 66 to record the examination of the complainant before he could dismiss the complaint.—*Dulali Bewa v. Bhuban Shaha*, 3 Ben. L.R.A. Cr. J. 53.

This section was not intended to enable a Magistrate to examine witnesses in the absence of the accused.—*Tuki Mahomed Mundul v. Kisto Nath Rai*, 15 W.R. Cr. 53.

**Sect. 147 (67). *Dismissal of complaint.***—The Magistrate before whom such complaint is duly made may, if, after examining the complainant, there is in his judgment no sufficient ground for proceeding, dismiss the complaint.

The dismissal of a complaint shall not prevent subsequent proceedings.

If it appears to such Magistrate that there is sufficient ground for proceeding, he shall, if the case appears to be a summons case, issue his summons, or, if the case appears to be a warrant case, his warrant, for causing the accused person to appear before himself or some other Magistrate having jurisdiction.

**Note.**—A complaint must not be dismissed without examining the complainant.—*In re Hurruck Chand Nowlaka*, 8 W.R. 12; *Amin Mahomed v. Braes*, 14 W.R. Crim. 36; and *in re Ramgasawnri Gounder*, 4 Madras H.C. Rep. 162. A magistrate is bound to take the evidence of the complainant before he dismisses a case, even though the charge has been investigated by the police and reported to be false—*Dulali Bewa v. Bhuhan Shaha*, 3 Ben. L.R.A. Cr. J. 53; for a complainant has a right to an adjudication upon the point, whether in the judgment of the magistrate there is sufficient ground for proceeding.—*Tuki Mahomed v. Kisto Nath Rai*, 15 W.R. Crim. 53. If a *prima facie* case of a criminal offence be made out, even although a civil suit would be the most convenient or appropriate remedy, a magistrate is bound to issue a summons or a warrant, as the case may require.—*In re Nubbas Mahato*, 8 W.R. 65; and *Khosal Singh v. Toolshee Chowdhry*, 10 W.R. Crim. 40. But if, after hearing the complainant, the magistrate does not consider that any criminal charge has been made out, he is not bound to go any further, but may dismiss the case at once.—*Batool Nushyo v. Bhugloo*, 10 W.R. Crim. 50.

Under Sect. 144, the examination of the prosecutor or complainant must be reduced to writing, and signed by him.—*Reg. v. Mahim Chandra Chuckerbutty*, 3 Ben. L.R.A. Cr. J. 67; and *Reg. v. Vyankatray Shrinivas*, 7 Bombay H.C. Rep. C.C. 55. But it has been held that a Court of Session ought to proceed with the trial of a prisoner who is brought before it on a charge exhibited by a

magistrate, who is authorized to make a commitment notwithstanding any irregularity or defect of form in recording the complaint.—*Reg. v. Narayen Naik* (F.B.) 5 Ben. L.R. 660. In the case of *Reg. v. Umesh Chandra Chowdhry*, 5 Ben. L.R. 160, a magistrate, on receipt of a petition from the complainant, without examining him, or otherwise reducing the examination to writing, and obtaining his signature thereto, and also without appending his own signature as magistrate to the petition, referred the petition to a deputy magistrate for trial; and it was held that the petition was a sufficient complaint, and that the magistrate was justified in making over the case for trial. These two decisions have been confirmed by the last clause of the 144th section, which provides that, “where the complaint has been made by petition, and the magistrate neglects to examine the complainant, the trial of the accused person shall not be set aside on that ground;” but it must, however, be remembered, that the non-existence of any complaint where one is necessary, renders all proceedings void.

If, however, the accused person *voluntarily* appears before a magistrate to answer a charge, the want of a complaint upon oath, necessary for the issuing of a summons on warrant, would doubtless, under the new law, be still held to be immaterial, as it was in the case of *Reg. v. Sadashwappa Pandwangappa*, 5 Bom. H.C. Rep. C.C. 29; or by his *voluntary* appearance in court the accused may be considered to have waived any previous irregularity. See also *Turner v. The Postmaster-General*, 34 L.J.N.S.M.C. 10.

Sect. 470 provides that in charges for which sanction is required under Chapter 35, the report or application of the public servant or court giving the sanction shall be deemed to be a sufficient complaint, thus upholding a decision to that effect in *Reg. v. Narayen Naik*, (F.B.) 5 Ben. L.R. 660.

**Sect. 148** (257). *In what cases summons may issue.*—When a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected of having committed, any offence triable by such Magistrate and punishable with fine only, or with imprisonment for a period not exceeding six months, or with both, the Magistrate may issue his summons directed to such person requiring him to appear at a certain time and place before such Magistrate to answer to the complaint.

If the Magistrate believes that the accused person is about to

abscond, he may, instead of issuing a summons, issue a warrant in the first instance for the arrest of such person.

**Sect. 149** (179, 248). *In what cases warrant may issue on complaint.*—When a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected of having committed, any offence triable by such Magistrate and punishable with imprisonment for a period exceeding six months,

or when a complaint is made before any Magistrate empowered to commit persons for trial before the Court of Session that any person has committed, or is suspected of having committed, any offence triable exclusively by the Court of Session, or which in the opinion of such Magistrate ought to be tried by the Court of Session,

such Magistrate may issue his warrant to arrest such person, or, if he thinks fit, his summons requiring him to appear to answer such complaint.

**Note.**—Where an Act declares that certain offences shall be punished by a Magistrate, but is silent regarding the jurisdiction over other offences, it has been held that these are cognizable only by the Court of Session to which the Magistrate is bound to commit.—*Reg. v. Atmaram Waman Bhandakar*, 3 Bombay H.C. Rep. C.C. 8; and *Reg. v. Lukshman Balaji*, *ibid.* 10.

See *Reg. v. Mahipyd valad Bomya Mahar*, 5 Bom. H.C.R. C.C. 99.

**Sect. 150** (260). *Warrant to arrest if summons not obeyed.*—If the person served with a summons does not appear before the Magistrate at the time mentioned in such summons, and the Magistrate is satisfied that such summons was duly served in what the Magistrate deems a reasonable time before the time therein appointed for appearing to the same,

or if it appears to the Magistrate that, after due diligence, the summons could not be served according to the provisions of this Act,

the Magistrate may issue his warrant to apprehend the accused person.

**Sect. 151** (260). *Magistrate may dispense with Personal Attendance of Accused.*—In cases, of whatever nature, in which the Magistrate thinks fit to issue a summons, he may, if he sees sufficient

cause, dispense with the personal attendance of the accused person and permit him to appear by an agent duly authorized to act in his behalf.

But it shall be in the discretion of such Magistrate at any stage of the proceedings to direct the personal attendance of the accused person.

**Note.**—Where the personal attendance of the accused has been dispensed with, a recognizance bond (if such is deemed necessary) should be taken from him, and not from his agent, binding him, the accused, to appear either in person or by agent, and a magistrate has no authority to secure the attendance of an agent by such a bond.—*Reg. v. Lallubhai Jassubhai*, 5 Bombay H.C. Rep. CC. 64.

There is no appeal against an order directing the personal appearance of the accused.—Sect. 286 (*j*).

## CHAPTER XII.

## OF THE SUMMONS.

**Sect. 152** (69). *Form of summons.*—Every summons issued by a Magistrate to an accused person shall be in writing, in duplicate, and shall be signed and sealed by such Magistrate, and shall be in the Form (A) given in the second schedule to this Act, or to the like effect.

**Note.**—The form given in the schedule is as follows:—

To A. B., of  
*Whereas your attendance is necessary to answer to a complaint of (state shortly the offence complained of): You are hereby required to appear in person [or by authorized agent, as the case may be] before the [Magistrate] of*  
*on the day of*  
*Herein fail not.*

*(Signature and Seal.)*

*Dated the day of*

The place of appearance must be specified.—7 Mad. H.C.R. Ruling, 43.

**Sect. 153** (70). *Summons by whom served.*—A summons shall ordinarily be served through a Police officer; but the Magistrate issuing the summons may, if he see fit, direct it to be served by any other person.

**Sect. 154** (71). *Summons how served.*—The summons shall be served on the accused personally, in any district where he may be, by exhibiting one of the copies and delivering or tendering the other copy to him, or, in case the accused person cannot be found, the copy may be left for him with some adult male member of his family residing with him, and the person summoned or the person with whom the copy is left shall sign a receipt therefor.

**Note.**—This section differs from the old one by providing that a summons shall be served by showing a copy of the summons to the accused and leaving another with him ; and also by requiring a receipt to be given for the summons. This latter portion may some day cause a discussion as to whether a person refusing to sign the receipt is punishable under the Penal Code, and if so, under what section. But the service is good when the copy is not accepted if duly tendered.

**Sect. 155 (72).** *Service when accused cannot be found.*—When the accused person cannot be found, and there is no adult male member of his family on whom the service can be made, the serving officer shall fix a copy of the summons on some conspicuous part of the house in which the accused person ordinarily resides.

**Sect. 156 (73).** *Issue of warrant in addition to summons.*—A Magistrate may, notwithstanding the issue of such summons, either before the appearance of the accused person as required by such summons, or after default made by him so to appear, issue a warrant of arrest against such person.

**Sect. 157 (74).** *Summons or warrant for offence committed beyond local jurisdiction.*—The Magistrate of the District, a Magistrate of a division of a District, or a Magistrate of the first class duly authorized in that behalf, and having local jurisdiction in such District or division of a District, may issue a summons or warrant for the apprehension of any person within such District or division of a District in respect of any offence known or suspected to have been committed by such person in a different District or division of a District, or on the high seas, or in a foreign country, and for which, if committed within the local jurisdiction of such Magistrate, he might issue a summons or warrant.

**Sect. 158 (75).** *Provisions applicable to all summonses.*—The provisions relating to a summons, its issue and service, contained in this chapter, shall be applicable to every summons issued under this Act, except a summons to serve as a juror or assessor :

Provided that, when the person summoned is in the service of Government or of any Railway Company, the Court or Magistrate issuing the summons may send the summons to the head of the office in which the person summoned is employed, and such head shall thereupon cause the summons to be served on the person named therein.



## CHAPTER XIII.

## OF THE WARRANT.

**Sect. 159 (76).** *Form of warrant.*—Every warrant issued by a Magistrate shall be in writing, and shall be signed and sealed by such Magistrate, and shall be in the Form (B) given in the second schedule to this Act, or to the like effect.

*Effect of warrant of arrest.*—The warrant issued under this chapter remains in force until the person arrested is brought into the presence of the Magistrate who issued it and so long as he remains before such Magistrate. If the person arrested is to be remanded to custody, an order must be made under Sect. 194, or a warrant issued under Sect. 303.

**Note.**—The following is the form of the warrant :—

To \_\_\_\_\_ (name and designation of the person or persons who are to execute the warrant).

Whereas \_\_\_\_\_ of \_\_\_\_\_ is accused of the offence of (state the offence) : You are hereby directed to apprehend the said \_\_\_\_\_, and produce him before me.

Herein fail not.

(Signature and Seal.)

This warrant may be endorsed as follows :—

If the said \_\_\_\_\_ shall give bail, himself in the sum of \_\_\_\_\_ with one surety in the sum of \_\_\_\_\_ (or two sureties each in the sum of \_\_\_\_\_) to appear before me on the \_\_\_\_\_ day of \_\_\_\_\_ he may be released.

(Signature.)

Dated \_\_\_\_\_

**Sect. 160.** *Magistrate may direct bail to be taken.*—It shall be in

the discretion of a Magistrate, in issuing a warrant for the arrest of any person, to direct by endorsement on the warrant that, if such person be willing and ready to give bail in a sum to be fixed by the Magistrate, for his appearance before the Magistrate on a specified day [which sum and day shall be named in such endorsement], to answer the complaint, the officer to whom the warrant is directed shall accept such bail, and shall release from custody the person complained against.

If bail is given, the officer shall forward the bail-bond to the Magistrate.

**Note.**—A warrant of arrest is informal if it purports to authorize the police to take bail, but does not specify the amount.—Reg. v. Viyankatrav Shrinivas, 7 Bombay H.C. Rep. C.C. 55.

When a prisoner is brought before a magistrate the warrant of arrest is at an end, and the prisoner cannot be legally committed to prison or remanded without sufficient grounds; and in the absence of evidence there can be no grounds.—Reg. v. Surendra Nath Roy, 5 Ben. L.R. 274.

**Sect. 161 (71).** *Warrants to whom directed.*—A warrant shall ordinarily be directed to a Police officer, but the Magistrate issuing a warrant may, if immediate execution be necessary and no Police officer be immediately available, direct it to any other person.

**Note.**—This is an alteration of the provisions of Act viii. of 1869 back to those of Act xxv. of 1861, apparently carrying out the spirit of the decision in Reg. v. Surendra Nath Roy, 5 Ben. L.R. 274, where it was held that a magistrate ought not to issue a warrant to an unofficial person, unless he was without the assistance of competent police officers, and the urgency was imminent.

**Sect. 162.** *Warrant may be directed to landholders, &c.*—The Magistrate of the District may direct a warrant or warrants to landholders, farmers, or managers of land, for the arrest of any escaped convict, proclaimed offender, or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Such landholder or other person shall acknowledge the receipt of the warrant, and shall be bound to execute it, should the person, for whose arrest it was issued, enter on or be in his estate, farm, or land under his charge.

Should the person against whom such warrant is issued be arrested, he shall be made over to the nearest Police officer with

the warrant, and such Police officer shall cause such accused person to be carried before the Magistrate having jurisdiction, unless bail may be and is taken under Sect. 160.

**Note.**—This section is new.

**Sect. 163 (73).** *Warrants directed to any person other than a Police officer.*—When a warrant is directed to a person other than a Police officer, any other person may aid in executing such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

**Sect. 164 (79).** *Warrant to several persons.*—A warrant may be directed to several persons, and when so directed, may be executed by all, or by any one or more of such persons.

**Sect. 165 (80).** *Warrant directed to Police officer.*—A warrant directed to a Police officer may also be executed by any other Police officer whose name is endorsed upon the warrant by the officer to whom the warrant is directed or endorsed.

**Sect. 166 (81).** *Magistrate issuing warrant may superintend its execution.*—The Magistrate by whom a warrant of arrest is issued, may attend personally for the purpose of seeing that the warrant is duly executed.

Any Magistrate may also at any time direct the arrest in his presence of any person for whose arrest he is competent to issue a warrant.

**Sect. 167.** *Where warrant may be executed.*—A warrant, issued by a Magistrate, shall ordinarily be executed in the district in which it was issued.

But if the person, against whom the warrant is issued, escapes, goes into, or is in any place out of the district in which the warrant was issued, the warrant may be executed in such place.

**Sect. 168.** *Magistrate may issue warrant for execution in places outside his jurisdiction.*—A Magistrate may direct a warrant to be executed outside his local jurisdiction, either after endorsement by a Magistrate within whose local jurisdiction it is to be executed, or without such endorsement.

If the warrant is to be so endorsed it may be sent by post to the Magistrate within whose local jurisdiction it is to be executed and by whom it is to be endorsed.

If the warrant is not to be endorsed, it shall be intrusted to a Police officer, to be taken either to a Magistrate or to a Police

officer, not below the rank of an officer in charge of a station, in whose local jurisdiction the warrant is to be executed.

**Note.**—Any Magistrate has power to endorse a warrant under this section.—Sect. 22.

**Sect. 169.** *Procedure on arrest of person against whom warrant was issued.*—If a warrant is executed, whether with or without endorsement, outside the district in which it was issued, the person arrested shall, unless the Magistrate, who issued the warrant, be within twenty miles, or be nearer than the Magistrate in whose local jurisdiction the arrest was made, or unless bail be taken under Sect. 160, be carried before the Magistrate in whose local jurisdiction the arrest was made.

**Sect. 170.** *Procedure by Magistrate before whom arrested person is brought.*—A Magistrate or Police officer, to whom a warrant is directed for execution, shall execute the same or cause it to be executed, and any Magistrate, before whom a person is brought under the provisions of Sect. 169, shall, if the person arrested appears to be the person intended by the Magistrate who issued the warrant, direct his removal in custody to the Magistrate who issued the warrant,

or, if the offence be bailable, and the person arrested be ready and willing to give bail, shall take bail for his appearance before the Magistrate who issued the warrant, and the recognizance or bail-bond shall be forwarded to such Magistrate.

In this section the word Magistrate includes a Commissioner of Police and a Magistrate of Police in the Presidency towns.

**Note.**—These sections, from 167, are re-enactments, with certain modifications in the arrangement of the clauses of Sects. 83-87 of the old Code.

“Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance, or otherwise, are exempt from stamps for court fees.”—Act vi. of 1870, Sect. 19, Clause 15.

**Sect. 171** (183). *Proclamation for person absconding.*—If any person accused of an offence, not coming within Sect. 148, absconds or conceals himself, so that, upon a warrant issued against him, he cannot be found, the Magistrate having jurisdiction shall, if he thinks, whether after taking evidence or not, that such person absconds or conceals himself for the purpose of avoiding the ser-

vice of the warrant, issue a written proclamation, requiring him to appear to answer the complaint within a fixed period not less than thirty days.

Such proclamation shall be publicly read in some conspicuous place of the town or village in which the accused person usually resides, and shall be affixed on some conspicuous part of his ordinary place of abode, or on some conspicuous place of such town or village.

A copy of the proclamation shall also be affixed on some conspicuous part of such Magistrate's Court-house.

A statement by the Magistrate to the effect that the proclamation was duly made shall be conclusive evidence of due compliance with the law.

**Note.**—Before issuing a proclamation, or ordering an attachment, a Magistrate is bound to satisfy himself by an examination of the officer to whom the warrant is directed, or in some other manner, that the accused is evading justice, and should record whether or not he was so satisfied.—*Reg. v. Bishonath Sirdar*, 3 W.R. 63. It is not sufficient for the Magistrate to record that the police could not find the accused.—*Reg. v. Sheodyal Singh*, 6 W.R. 73. A proclamation cannot be issued for the appearance of a person charged with an offence, the trial of which is regulated by Chapter XV. of the Procedure Code, 496.—*Reg. v. Muddun Mohun Poddar*, 3 W.R. 35.

**Note.**—Any Magistrate can issue a proclamation under this section.—Sect. 22.

**Sect. 172** (184). *Attachment of property of person absconding.*—Such Magistrate may order the attachment of any property, moveable or immovable, or both, belonging to the person so absconding or concealing himself.

Such order shall authorize the attachment of any property within the jurisdiction of the Magistrate of the District in whose district it is made; and it shall authorize the attachment of any property without the jurisdiction of the Magistrate of the District, when endorsed by the Magistrate of the District, in which such property is situated.

The attachment under this section shall, if the property ordered to be attached be land paying revenue to Government, be made through the Collector of the District in which the land is situate,

and, in all other cases, by seizure under the order of the Magistrate having jurisdiction; or by the appointment of a manager and receiver, or by an order prohibiting the payment of rent to the absent person; as such Magistrate deems proper.

If the absent person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government, but shall not be sold until the expiration of six months, unless it is of a perishable nature, or such Magistrate considers that the sale would be for the benefit of the owner.

**Note.**—The words, “order the attachment of any property, moveable or immoveable,” are enabling, not restrictive words, and the magistrate may attach both kinds of property; but he must issue his warrant of attachment simultaneously with the proclamation, if he resorts to attachment at all.—4 Madras H.C. Rep. App. 48. An order of forfeiture under this section, if substantially legal, cannot be disturbed for an immaterial error of procedure.—Reg. v. Gugun Misser, 8 W.R. Crim. 61. Property which, under this section, is at the disposal of Government, can only be restored by Government; the High Court has no power to make any order with respect to such property—*In re Government of Bengal*, 9 B.L.R. 342; but this case determines nothing as to the provisions of Sect. 173, as the petitioner did not clear himself of the accusation of absconding and concealing himself. If any magistrate, unempowered, sells and attaches property under this section, his proceedings are void.—Sect. 34.

**Sect. 173 (185).** *Restoration of forfeited property.*—When any person whose property has come under the disposal of Government under Sect. 172, appears or is found within two years after the attachment of the property, and proves to the satisfaction of the Court of Session or High Court trying him for the offence of which he was accused, or, if he is not tried in, or committed for trial for that offence to either of those Courts, to the satisfaction of the Magistrate of the District, that he did not abscond or conceal himself for the purpose of evading justice, such property, or, if the same has been sold, the proceeds thereof, shall be restored to him.

**Note.**—A civil suit does not lie to set aside a sale of property under this section.—*Bukhooree Singh v. The Government*, 8 W.R. Civ. 207.

Where the accused, when petitioning for a removal of the attach-

ment, does not deny the attempt to arrest him, or the issue of the proclamation, it is not necessary for the Government to prove that the accused had absconded, or that the legal formalities of the proclamation had been properly attended to.—*In re Madhassurun Singh*, 9 W.R. Crim. 27.

**Sect. 174** (88). *Magistrate's procedure on arrest under his own warrant for offence committed out of his jurisdiction.*—On the arrest of a person for whose apprehension a warrant has been issued under the provisions of Sect. 157, in respect of an offence known or suspected to have been committed in another District or division of a District, the Magistrate who issued the warrant shall, unless he is authorized to complete the inquiry himself, send the person arrested to the Magistrate within the limits of whose jurisdiction the offence is known or suspected to have been committed, or shall take bail for his appearance before such Magistrate, if the offence, of which such person is suspected, is bailable.

When the Magistrate, who issued the warrant, cannot satisfy himself as to the Magistrate to whom the person arrested should be sent, the case shall be reported for the orders of the High Court.

**Sect. 175** (89). *Procedure where such warrant issued by Subordinate Magistrate.*—If the arrest was made under a warrant issued under Sect. 157 by a Magistrate other than the Magistrate of the District, such Magistrate shall send the person arrested to the Magistrate of the District, unless the Magistrate, in whose jurisdiction the offence is suspected to have been committed, issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the Police officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

If the offence of which the person arrested is suspected, has been committed in the jurisdiction of another Subordinate Court of the same District, the Magistrate who issued the warrant under Sect. 157 shall send the person arrested to the Magistrate of the division of the District in which the offence was committed.

**Sect. 176** (90). *Notification of substance of warrant.*—A Police officer or other person, executing a warrant of arrest, shall notify the substance of the warrant to the person to be arrested, and, if required to do so, shall show the warrant to such person.

**Sect. 177 (91).** *Warrant how executed.*—In making an arrest, the Police officer or other person executing the warrant shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

**Sect. 178 (92).** *Resisting endeavour to arrest.*—If a person, against whom a warrant of arrest is issued, forcibly resists the endeavour to arrest him, the Police officer or other person executing the warrant may use all means necessary to effect the arrest.

**Sect. 179 (93).** *Search of house entered by person against whom warrant issued.*—If there is reason to believe that any person, against whom a warrant has been issued, has entered into, or is within, any house or place, it shall be the duty of any person residing in or in charge of such house or place, on demand of the Police officer or other person executing the warrant, to allow such Police officer or other person free ingress thereto, and to afford all reasonable facilities for a search therein.

**Sect. 180 (94).** *Breaking of door or window.*—The Police officer or other person authorized by warrant to arrest a person, may break open any outer or inner door or window of any house or place, whether that of the person accused or of any other person, in order to execute such warrant, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

**Sect. 181 (95).** *Breaking open zenāna.*—If information be received that a person, accused of any offence for which a warrant may issue is concealed in an apartment in the actual occupancy of a woman, who, according to the customs of the country, does not appear in public, the Police officer or other person employed to execute the warrant shall take such precautions as may be necessary to prevent the escape of the accused person.

If the accused person does not deliver himself up, the Police officer or other person authorized to execute the warrant may notify his authority and purpose, and demand admittance.

If after such notification and demand he cannot otherwise obtain admittance, he shall give notice to any woman as aforesaid in such apartment, not being a person against whom a warrant has been issued, that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and execute the warrant.



**Sect. 182** (96). *No unnecessary restraint.*—The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

**Sect. 183** (97). *Person arrested to be brought before Magistrate.*—The officer or other person executing the warrant shall, without unnecessary delay, bring the person arrested before the Magistrate before whom he is required by this Act to produce him.

**Sect. 184** (98). *Inducements to disclosure or confession.*—No Police officer or other person shall offer to the person arrested any inducement, by threat or promise or otherwise, to make any disclosure.

But no Police officer or other person shall prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

**Note.**—Any disclosure or confession so obtained will not be admissible in evidence, except under the restrictions imposed by this Act and by the Indian Evidence Act, 1872.—See Note to Sect. 122.

**Sect. 185** (99). *Provisions relate to all warrants of arrest.*—The provisions relating to a warrant and its execution contained in this chapter, shall be applicable to every warrant of arrest issued under this Act.

# PART V.

## OF INQUIRIES AND TRIALS.

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### CHAPTER XIV.

#### PRELIMINARY.

**Sect. 186 (432).** *Right of accused to be defended.*—Every person accused in any Criminal Court of an offence may of right be defended by any barrister or attorney of a High Court, or by any pleader duly qualified under the provisions of Act No. XX. of 1865, or any other law in force for the time being relating to pleaders.

Any such person may, with the permission of the Court (but not otherwise), employ any mukhtár or other person not being a barrister, attorney, or pleader, to assist him in his defence.

*Where accused person does not understand the proceedings.*—If an accused person, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and if such inquiry results in a committal, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court, with a report of the circumstances of the case, and the High Court shall pass thereon such order as to it seems fit.

**Note.**—The first paragraph commenced originally thus: "Every person charged before any Criminal Court with an offence;" the alteration has been made by Act xi. of 1874.

The last clause of this section is entirely new, and for the first time allows an accused person to be convicted when he is unable to

make a defence.—See *Dwarka Nath Hilda v. Noder Chande Kamte*, 22 W.R. Crim. 34; *Reg. v. Bowka Hari*, 22 W.R. Crim. 35, 72.

The first clause strictly interpreted shuts out from defending prisoners those advocates of the High Courts who are not barristers—*i.e.*, as defined by Act i. of 1868, barristers of England or Ireland or members of the Faculty of Advocates in Scotland. But this strict interpretation has not been adhered to. No advocate or attorney of the High Court, or authorized pleader, appearing under this section should be required to file a vakalutnamah.—Ruling vii., Mad. H.C. Reps. 41. In the case of *Chunder Charam Chatterjee v. Chunder Coomar Ghose* (14 W.R. Crim. 23), it was held that a pleader may appear in criminal cases not only on behalf of an accused person, but also on behalf of a private prosecutor.

**Sect. 187** (279). *Criminal Courts to be open*.—The place in which the Court of a Magistrate is held for the trial of any offence, or for the purpose of conducting an inquiry into any case triable by a Court of Session or High Court, and also every Court of Session and every High Court, shall be deemed an open and public Court, to which the public generally may have access, so far as the same can conveniently contain them.

But the Magistrate or presiding Judge may, if he thinks fit, order that, during the inquiry into or trial of any particular case, no person shall have access to, or be, or remain in, the room or building used by the Court without the consent or permission of the Court.

**Sect. 188.** *Compounding offences*.—In the case of offences which may lawfully be compounded, injured persons may compound the offence out of Court, or in Court with the permission of the Court.

Such withdrawal from the prosecution shall have the effect of an acquittal of the accused person.

## CHAPTER XV.

### OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

**Sect. 189.** *Procedure in preliminary inquiries.*—The following procedure shall be adopted in inquiries before Magistrates in cases triable by a Court of Session or High Court.

**Sect. 190** (193). *Examination of complainant and witnesses for prosecution.*—When the accused person appears or is brought before the Magistrate, or, if his personal attendance is dispensed with, when the Magistrate thinks fit, the Magistrate shall take the evidence of the complainant and of such persons as are stated to have any knowledge of the facts which form the subject-matter of the accusation and the attendant circumstances.

**Sect. 191** (194). *Examination to be in presence of accused.*—The complainant and the witnesses for the prosecution shall be examined in the presence of the accused person, or of his agent, when his personal attendance is dispensed with, and he appears by agent.

The accused person or his agent shall be permitted to examine and re-examine his own witnesses and to cross-examine the complainant and his witnesses.

**Note.**—Where a magistrate took the depositions in a case by reading over to the witnesses depositions taken in another case, at the hearing of which the prisoner was not present, and by procuring them to affirm to the truth of what was read over to them; it was held, on the authority of *The Attorney-General of New South Wales v. Bertrand*, 1 L.R.P.C. 520, and 36 L.J.N.S.P.C. 51, that the depositions were illegally taken, and could not sustain a charge—*Reg. v. Rajkrishna Mitter*, 1 Ben. L.R.A. Cr. J. 37; and *Reg. v. Bishonath Pal*, 3 Ben. L.R.A. Cr. J. 20; but where the evidence of

witnesses given on a previous occasion was read over and used in a subsequent trial *at the express request of the prisoners*, instead of the witnesses being examined *de novo*, the High Court refused to interfere, as the prisoners were not prejudiced by the irregularity.—*Purmessur Singh v. Soroop Andikharee*, 13 W.R. Crim. 40. See also on this point, *Kopil Nath Sahi v. Koneeram*, 14 W.R. Crim. 3.

The accused must be present *as an accused person*, and must be allowed to cross-examine the witnesses against him, and to make his defence. It is not sufficient that he should be present as one of a number who depose to certain facts, the result of such deposing being that the prisoner is committed for trial. If he happened to be present at first as a witness, it is essential that he should know at what time he ceased to be a witness and became a defendant, so that he might know when his rights as an accused person commenced, and might avail himself of them.—*Reg. v. Kalichurn Lahoree*, 5 R.C.C. Cr. 41; and 9 W.R. Crim. 54. It is improper to allow witnesses for the prosecution to give evidence as to the prisoner's bad character—*Reg. v. Timmi*, 2 Bombay H.C. Rep. 131; or of his previous conviction, and the bad character of his relations—*Reg. v. Phoolchiand*, 8 W.R. Crim. 11.

The right of an accused person to cross-examine witnesses is limited to the right to cross-examine the witness for the prosecution, or the crown, called against him. If he wishes to avail himself of the evidence which has been given by a witness called for another of the parties accused, he must call him as his own witness.—*Reg. v. Surroop Chunder Paul*, 12 W.R. Crim. 75.

**Sect. 192 (201).** *Power of Magistrate to summon and examine any person.*—The Magistrate may, at any stage of the proceedings, summon and examine any person whose evidence he considers essential to the inquiry, and re-call and re-examine any person already examined.

**Sect. 193 (202).** *Examination of accused.*—The Magistrate may, from time to time, at any stage of the inquiry, and without previously warning the accused person, examine him, and put such questions to him as he considers necessary.

The accused person shall not render himself liable to punishment for refusal to answer such questions, or for giving false answers to them, but the Magistrate shall draw such inference as may to him seem just from such refusal.

*Explanation.*—The answer given by an accused person may be put in evidence against him, not only in the case under inquiry, but also in trials for any other offences which his replies may tend to show he has committed.

*Note.*—The provisions of this section apply to trials of warrant cases conducted under Chapter XVII. This is expressly provided for by Sect. 214. There is no such express provision as to summons cases.

The discretion of a magistrate to ask questions of an accused person is entirely unfettered, but the examination should not be of an inquisitorial character; and although the magistrate is not bound to do so, yet it is fit that he should inform the accused that he is not bound to answer.—*In re Dinoo Roy*, 16 W.R. Crim. 21. This discretionary power to examine the accused should be used to ascertain from him how he can explain facts adduced in evidence against him, and not to drive or entrap him into making self-criminatory statements.—*Ex parte Virabudra Gaud*, 1 Madras H.C. Rep. 199. Therefore questions must not be put to the prisoner in the middle of the case for the prosecution so as to supplement their case where it is defective.—*Reg. v. Diaz*, 3 Bombay H.C. Rep. C.C. 51. And it is very undesirable that the accused should be examined by the magistrate when the latter is satisfied that the evidence adduced by the prosecution does not disclose any foundation for a criminal charge against him.—*In re Shama Tankar Biswas*, 1 Ben. L.R. Short notes, 5; and 10 W.R. Crim. 25.

A statement made under a promise of pardon is not evidence against the person making it, except as provided by the last clause of Sect. 349.—See Sects. 24 to 30 of the Evidence Act i. of 1872.

The explanation attached to this section vastly alters the law as it formerly stood, for under the old practice the statement of an accused could only be used against him in the particular case in which it was made.

**Sect. 194 (224).** *Adjournment of inquiry and remand.*—If, from the absence of a witness or from any other reasonable cause, it becomes necessary or advisable to defer the examination, or further examination, of witnesses, the Magistrate may, by a written order, from time to time, adjourn the inquiry, and remand the accused person for such time as is deemed reasonable, not exceeding fifteen days.

Instead of detaining the accused person in custody during the period for which he is so remanded, the Magistrate may release him, upon his entering into a recognizance, with or without a surety or sureties, at the discretion of such Magistrate, conditioned for his appearance before such Magistrate at the time and place appointed for the continuance of such examination.

*Explanation.*—After commencing the inquiry if sufficient evidence has been obtained to raise a suspicion that the person accused may have committed an offence, and it appears likely that further evidence may be obtained by remand, this is a reasonable ground for a remand.

*Note.*—No remand without a hearing can be for a longer time than fifteen days—*Reg. v. Surkya Valad Dhaku*, 5 Bombay H.C. Rep. C.C. 31; and *Reg. v. Sahoo*, 11 W.R. Crim. 19. As to what has been considered reasonable cause, or otherwise, see *Taki Mahomed Mandal v. Krishna Nath Rai*, 7 B.L.R. 7, and the cases cited in the notes to that case.

In the matter of *Mathoord Nath Chuckerbutty* (17 W.R. Crim. 55, and 9 B.L.R. 354), where there had been an improper adjournment of an inquiry by a Magistrate, the High Court of Calcutta set aside his order, under Sect. 15 of the Charter Act (24 & 25 Vict. c. 104), without determining whether they had power to do so under Sect. 404 of the Criminal Procedure Code (Act xxv. of 1861) then in force, the Court being in doubt whether they had power under that Code. But Sect. 404 of the repealed Code only gave the High Court general power of revision where there appeared to it that there had been an error in the decision sent up for revision on a point of law, or that there was a point of law that should be considered by the High Court. Sect. 297, however, of the present Code gives the fuller power of revision in cases where there has been a material error in any judicial proceeding in a subordinate Court, and therefore the High Court would now have power to make such an order as that above referred under the present Sect. 297.

**Sect. 195 (225).** *When accused person to be discharged.*—When a Magistrate finds that there are not sufficient grounds for committing the accused person to take his trial before the Court of Session or High Court, or for remanding him, he shall discharge him, unless it appears to the Magistrate that such person should

be put on his trial before himself, in which case he shall proceed under Chapters XVI., XVII., or XVIII. of this Act.

*Explanation 1.*—The absence of the complainant, except when the offence may lawfully be compounded, shall not be deemed sufficient ground for a discharge, if there appear other evidence of a nature rendering a trial desirable.

*Explanation 2.*—A discharge is not equivalent to an acquittal, and does not bar the revival of a prosecution for the same offence.

*Explanation 3.*—An order of discharge shall not ordinarily be made until the evidence of the witnesses named for the prosecution has been taken.

*Note.*—The words “shall not ordinarily” are substituted for the original word “cannot” by Act xi. of 1874.

The three explanations attached to this section are new, and afford a guidance to Magistrates which recorded decisions on other sections of the old Code show was needed. In cases triable by the Court of Session only, a Magistrate cannot acquit, but only discharge; and if he affects to acquit a prisoner charged with such an offence, the acquittal operates only as a discharge, and the Sessions Judge can still order him to be committed for trial.—*Reg. v. Sreenath Dey*, 15 W.R. Crim. 61.

A Magistrate, under this section, may discharge an accused sent to him under Sect. 471 (171 of the old Code) if, in his opinion, the evidence against him does not warrant his being committed for trial.—*Reg. v. Pandurang Myral*, 5 Bombay H.C. Rep. C.C. 41.

**Sect. 196** (226). *When accused is to be committed for trial.*—When evidence has been given before a Magistrate which appears to justify him in sending the accused person to take his trial for an offence which is triable exclusively by the Court of Session or High Court, or which, in the opinion of the Magistrate, is one which ought to be tried by such Court, the accused person shall be sent for trial by such Magistrate before the Court of Session or High Court, as the case may be.

*Note.*—A commitment once made by a competent Magistrate can only be quashed by the High Court. Sect. 197.

Under the old Code it was held that it was not illegal for a prisoner to be committed before either he or his witnesses have been heard—*Reg. v. Hurnath Roy*, 2 W.R. Crim. 50; but now, under Sect. 191 (which differs from the corresponding Sect. 194 of the old Code in



that it provides that the accused or his agent shall be permitted to examine and re-examine his own witnesses), the accused has a right to examine his witnesses.

The explanation annexed to Sect. 197 applies to this section also, and is in accordance with the ruling in *Reg. v. Salim Sheikh, supra.*

**Sect. 197.** *When commitment to be to a High Court.*—If such accused person (not being a European British subject)

is accused of having committed an offence conjointly with a European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge,

and the evidence appears to justify the Magistrate in sending the accused person for trial,

he shall commit such accused person to take his trial before such High Court, and not before a Court of Session; and such High Court shall have jurisdiction to try such person.

*Explanation.*—A commitment once made by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

This explanation applies also to Sect. 196.

**Sect. 198 (233).** *Charge.*—When the Magistrate determines to send the accused person before the Court of Session or High Court for trial, he shall, after the evidence has been recorded, make a written instrument under his hand and seal, declaring with what offence the accused person is charged, and shall direct him to be tried by such Court on such charge. He shall also record his reasons for committing such accused person.

(229.) A copy of such instrument shall be forwarded with the record of the original inquiry to the Court of Session before which the accused person is to be tried; and a copy shall also be sent to the public prosecutor or other officer appointed to conduct the prosecution.

Any weapon or other article of property necessary to produce in evidence shall also be transmitted to the Court of Session.

When a commitment is made to the High Court, such instrument, record, and such weapon or other article, shall be forwarded to the Clerk of the Crown or other officer appointed by the Court; and if any part of such record is not in English, a translation thereof in English shall be forwarded therewith.

**Note.**—Property which it is necessary to produce at the trial of a prisoner should remain in the custody of the Court until his appeal, if any be brought, is disposed of.—*Reg. v. Pittamber Sirkar*, Calcutta H.C. 2 Mad. J. 282.

**Sect. 199 (227).** *Copy of charge to be furnished to accused.*—As soon as the charge on which the accused person is to be tried has been prepared, it shall be read and explained to him; and a copy or translation thereof shall be furnished to him, if he so require.

**Sect. 200 (227).** *List of witnesses for defence and trial.*—The accused person shall be required at once to give in, orally or in writing, a list of witnesses whom he wishes to be summoned to give evidence on his trial before the Court of Session or High Court.

The Magistrate may, if he thinks proper, summon the persons so named to attend and give evidence at the inquiry; and if he does so, the commitment shall not be considered to have been made until such evidence has been taken.

It shall be in the discretion of the Magistrate, subject to the provisions of Sect. 359, to allow the accused person to give in any further list of witnesses at a subsequent time.

**Note.**—A prisoner, who was about to be committed to the Sessions Court, presented to the magistrate a list of witnesses whom he desired to have summoned to give evidence on his behalf at the trial, and on being asked by the magistrate why he desired to summon the witnesses, the prisoner declined to state his reason. It was held, on this state of facts, that the magistrate was at liberty to decline to summon the persons named on the list, as the prisoner declined to satisfy him that they were material witnesses; but that he ought to have fixed the amount which he considered necessary to defray the cost of their attendance, and intimated his readiness to issue summons on that amount being deposited in court.—*Reg. v. Subharaya Mudali*, 4 Madras H.C. Rep. 81. In the case of *Reg. v. Ishan Dutt*, 15 W.R. Crim. 34, it was, however, held that the magistrate is bound to take steps to procure the attendance of all the witnesses named by the accused in his list. Since then the case of *Reg. v. Rajcoomar Mookya*, 16 W.R. Crim. 14, has been decided, in which the ruling of the High Court at Madras has been upheld, with the addition that the magistrate ought to record his reasons for refusing to summon witnesses. And Sects. 358, 359

now fix the law as determined in the above case at Madras, the magistrate, however, having a discretion whether or not to summon witnesses in doubtful cases, on the sum to defray the expense of their attendance being deposited.

**Sect. 201 (230).** *Copies of depositions to be furnished to accused.*—When the inquiry is concluded, the accused person shall, if he demands them at a reasonable time before the trial, be furnished with copies of the depositions. Such copies shall be made at his expense, unless the Magistrate sees fit to give them free of cost.

**Note.**—A prisoner is entitled to have copies of all documents filed in Court which he considers necessary for his defence, and for which he asks; and it is for the officer trying the case, whether magistrate or judge, to determine at the hearing whether the documents filed by the prisoner are admissible in evidence.—*In re Shib Prasad Panda*, 6 Ben. L.R. App. 59, and 14 W.R. Crim. 77.

**Sect. 202 (231).** *When commitment made Magistrate to give notice to Government prosecutor.*—When the accused person is committed to take his trial before the Court of Session or High Court, the Magistrate shall issue an order to the public prosecutor, Government Pleader, or other person appointed by the Government to conduct prosecutions before the Court of Session or High Court, notifying such commitment, and stating the offence in the same form as the charge, *unless the Magistrate is satisfied that such Government Pleader or other person is already aware of the commitment and the form of the charge.*

Nothing in this section shall preclude the Magistrate of the District in a case committed to the Court of Session, if he thinks fit, from appointing a person other than such Government Pleader or person to conduct the prosecution.

**Note.**—The words, “unless the Magistrate . . . form of the charge,” are added by Act xi. of 1874.

## CHAPTER XVI.

### OF THE TRIAL OF SUMMONS CASES BY MAGISTRATES.

**Sect. 203.** *Procedure in summons cases.*—The following procedure shall be observed in the trial of summons cases.

No formal charge need at any time be made against the accused person, and neither the complaint nor the summons shall be regarded otherwise than as notice to the accused person of the facts to be inquired into. The Magistrate may convict the accused person of any offence (coming under this chapter) which, from the facts proved, he appears to have committed, whatever may be the nature of the complaint or summons.

No defect in the complaint or summons shall affect the validity of the proceedings unless it appears that the accused person was actually misled by such defect, and in considering whether or not he was so misled the Court shall have regard to the manner in which the accused person conducted his defence.

**Note.**—A summons case is defined by Sects. 4 and 148 as a case in which a person has committed, or is suspected of having committed, any offence triable by a magistrate having jurisdiction, and punishable by fine only, or with imprisonment, not exceeding six months, or with both.

The “trial” under this chapter commences from the time when the accused appears in Court. Sect. 4.

**Sect. 204** (258). *Accused person may be admitted to bail.*—If upon the day appointed the accused person appears voluntarily in obedience to the summons in that behalf served upon him, or is brought before the Magistrate by virtue of a warrant or otherwise, it shall be at the discretion of the Magistrate to admit him to bail,

or allow him to be at large upon his own personal recognizance, as the Magistrate directs.

If the accused person cannot give bail, when required to do so, he shall be committed to custody.

**Note.**—Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise, are exempt from stamps for Court fees.—Act vii. of 1870, sect. 19, clause 15.

**Sect. 205 (259).** *Non-appearance of complainant.*—If upon the day appointed for the appearance of the accused person, or any day subsequent thereto on which the case may be called on, the complainant does not appear, the Magistrate shall dismiss the complaint, unless for some reason he thinks proper to adjourn the hearing of the same to some other day. Such adjournment shall be made upon such terms as the Magistrate thinks fit.

**Note.**—A deputy magistrate adjourned a case to a certain day, on which he dismissed it for the non-attendance of the complainant; but on the following day cancelled that order, and revived the case on the ground that he had dismissed the case by mistake, and in ignorance of the complainant having petitioned for an adjournment on account of sickness. The magistrate on appeal reversed the order of this deputy; but as the original order of the deputy magistrate was manifestly wrong, the High Court set aside the whole of the proceedings, and restored the case to the position in which it stood before the day to which it was in the first instance adjourned.—*Reg. v. Ramnarain Ghose*, 8 W.R. Crim. 5.

**Sect. 206 (265).** *Substance of complaint to be stated.—Conviction.*—On the appearance of both parties, on the day fixed for the trial, the substance of the complaint shall be stated to the accused person, and he shall be asked if he has any cause to show why he should not be convicted.

If the accused admit the truth of the complaint, his admission shall be recorded, and if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly of such offence (coming under this chapter) as he may appear to have committed.

**Sect. 207 (266).** *Procedure when no such admission is made.*—If the accused person does not admit the truth of the complaint, the Magistrate shall proceed to hear the complainant and such wit-

nesses as he produces in support of his complaint, and also to hear the accused person and such witnesses as he produces in his defence.

**Note.**—A Magistrate has authority to dismiss a complaint before issuing a summons to the accused; but when the parties charged are in attendance in Court, as well as the complainant and his witnesses, the Magistrate is bound to follow the procedure laid down in these two sections, and cannot dismiss the complaint without hearing the evidence.—*Bilash v. Makroo*, 2 Ben. L.R. Short Notes, 16, and 10 W.R. Crim. 61.

Under Sect. 266 of the old Code, it was held that a Magistrate acting under this chapter was bound to take the defence of the accused, and to hear all the witnesses the accused might produce in his defence before recording any order or conviction—*Reg. v. Bissessur Sein*, 9 W.R. Crim. 62; *in re Mohima Chunder Chuckerbutty*, 12 W.R. Crim. 78, and 4 Ben. L.R. App. 77; *in re Ameer Chand Nohatta*, 13 W.R. Crim. 63: but a Magistrate was only bound to hear such witnesses as the defendant actually produces in Court—4 Madras H.C. Rep. App. 29; or who had been previously summoned by the accused—*in re Cheder Koonjra*, 14 W.R. Crim. 76; though it might be an unwise exercise of discretion for the Magistrate not to send for those named by the accused who are not actually in Court—4 Madras H.C. Rep. App. 29. Now, under Sect. 361, the Magistrate has a discretion in summoning witnesses named by the complainant or accused, and may require a deposit of the expenses of a witness before summoning him.

**Sect. 208 (269).** *Adjournment.*—Before or during the hearing of any complaint, the Magistrate may, in order to secure the attendance of witnesses or for any other reason, adjourn the hearing of the same to a day to be then appointed and stated in the presence and hearing of the party or parties.

If on the day to which such hearing or such further hearing has been so adjourned, the accused person does not appear, the Magistrate may issue his warrant for the arrest of such person.

If the complainant does not appear the Magistrate may dismiss the complaint.

**Note.**—Sect. 212, providing that a dismissal under this chapter shall operate as an acquittal, renders it unnecessary to cite here the cases under the old Code pointing out when a dismissal should and

when it should not prevent a fresh complaint being laid in respect of the same offence.

**Sect. 209 (270).** *Compensation in cases of frivolous or vexatious complaints.*—A Magistrate may dismiss the complaint as frivolous or vexatious, and may, in his discretion, by his order of dismissal, award that the complainant shall pay to the accused person such compensation, not exceeding fifty rupees, as to such Magistrate seems just and reasonable.

In such cases, if more persons than one are accused in the complaint, the Magistrate may in like manner award compensation not exceeding fifty rupees to each of them.

The sum so awarded shall be recoverable by distress and sale of the moveable property belonging to the complainant, which may be found within the jurisdiction of the Magistrate of the District; and such order shall authorize the distress and sale of any moveable property belonging to the complainant without the jurisdiction of the Magistrate of the District, when the order has been endorsed by the Magistrate of the District in which such property is situated, and if the sum awarded cannot be realized by means of such distress, by imprisonment of the complainant in the civil jail for any time not exceeding thirty days, unless such sum is sooner paid.

**Note.**—This section only applies to the dismissal of a case on the merits, and not to a dismissal in default of the complainant's appearance.—*Ram Churn Dey v. Sheikh Janu*, 17 W.R. Crim. 6.

Amends under this section can only be awarded where the case dismissed falls entirely under this chapter.—*Bhoirub Chunder Pundit v. Hussun Alli Chowdry*, 5 R.C.C. Cr. 17; *Reg. v. Lalloo Singh*, 8 W.R. Crim. 54; *Gunamanee v. Haree Data*, 18 W.R. 6; *Reg. v. Ramji-valad Daji*, 5 Bombay H.C. Rep. C.C. 12. Therefore when a complaint was preferred to a magistrate of an offence not coming within this chapter, and he alters so as to make it a summons case, and dismisses the complaint, he cannot award compensation to the accused, the offence originally complained of not being one in respect of which compensation could be awarded.—*Reg. v. Gurningapa*, 7 Bombay H.C. Rep. C.C. 58. On the other hand, the High Court at Calcutta, in the case of *Hothoor Laloong v. Hindoo Sing Monz*, 10 W.R. Crim. 49, has ruled that where a magistrate is dealing with a charge which he has power to dispose of finally under this chapter, although the charge as originally laid fell under

that relating to the trial of warrant cases, he has a discretion to award amends. This last decision will doubtless be followed by all the High Courts now that Sect. 203 specially provides that the summons and complaint shall be regarded in no other light than notice to the accused of the facts to be inquired into, and not as binding the magistrate or prosecutor to proceed only on a charge of the specific offence named therein.

Where a complainant preferred three charges of three distinct offences, two of which were triable under this chapter, and one was a warrant case, it was held that a magistrate might award compensation to the accused, if he considered the two charges triable under this section to have been vexatious.—*Modhoosoodun Ghose v. Joyram Hazrah*, 12 W.R. Crim. 39. But see *Gunamane v. Haree Datta*, 6 W.R. Crim., according to the head-note of which an award under this section was set aside, because the charge was one that only partly came under this section.

When a prosecutor, by making contradictory statements, fails to substantiate his charge, the magistrate who tries the case under this chapter can award compensation to the accused, although he commits the prosecutor to take his trial on a charge of giving false evidence.—*Reg. v. Russan Rai*, 6 Ben. L.R. 296; and 15 W.R. Crim. 9.

A person against whom an award has been made under this section is not a person "convicted on a trial;" and is therefore not able to appeal against the award of a subordinate magistrate to the magistrate.—*Madras H.C.*, 29th April 1867, 2 *Madras Jurist*, 322.

It has been held that Sect. 270 of the old Code did not apply to complaints under a special law, but only to complaints triable by a magistrate, and punishable under the Penal Code with imprisonment for a period not exceeding six months—*Reg. v. Abdool Aziz-khan*, 14 W.R. Crim. 36; but under Chapter XV. of the old Code summons cases were defined as cases in which the offence alleged to have been committed was punishable *under the Indian Penal Code* with fine only, or with imprisonment for a period not exceeding six months, while Sect. 148 of the present Act carefully omits all mention of the Indian Penal Code, and does not limit the term of "offence" to acts or omissions punishable under the Penal Code. See Sect. 141 as to what magistrates may entertain complaints.

**Sect. 210 (271). *Withdrawal of complaint.***—If a complainant,



at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw it.

A complaint withdrawn under this section shall not again be entertained.

**Note.**—Offences punishable under the Penal Code with more than six months' imprisonment, not being triable under the provisions of this chapter, do not fall within the provisions of this section so as to permit the complaint to be withdrawn—Anon. 4 Ben. L.R.F.B. 41, and 12 W.R. Crim. 59; overruling the case of *Government v. Chunder Coomar Sein*, in so far as it determined that a case of bribery came within this chapter of the Criminal Procedure Code.

**Sect. 211** (272). *Acquittal—Conviction.*—If the Magistrate, in any case tried under this chapter, find the accused person not guilty, he shall record a judgment of acquittal.

If the accused person is convicted, the Magistrate shall pass sentence upon him according to law.

(261). When the personal attendance of the accused person during the trial has been dispensed with, the sentence of the Magistrate, if the sentence be for fine only, may be pronounced in the presence of such accused person's agent, if he has been permitted to appear by agent, or the accused person may be required to attend to hear such sentence.

**Sect. 212.** The dismissal of a complaint under this chapter shall operate in like manner as the acquittal of the accused person.

No complaint shall be dismissed under the provisions of this chapter, except in so far as it refers to a summons case.

**Note.**—An order of dismissal of a complaint under Sect. 147 on the preliminary examination of the complainant, which does not operate as an acquittal, can be set aside under Sect. 298, but there is no appeal against orders of dismissal under this section (see Sect. 286 (b)), and the High Court can only interfere where an application to them to upset the acquittal of an accused person is made by or under the sanction of Government.—*In re J. G. Bagram*, 19 W.R. Crim. 52; *Luchi Behara v. Nityanund Doss*, 19 W.R. Crim. 55.

## CHAPTER XVII.

### OF THE TRIAL OF WARRANT CASES BY MAGISTRATES.

**Sect. 213.** *Procedure in Warrant Cases.*—The following procedure shall be observed by Magistrates in the trial of warrant cases.

**Sect. 214** (249). *Sections 190 to 194 to apply.*—The provisions of Sects. 190 to 194 (both inclusive) shall apply to trials conducted under this chapter.

**Note.**—Sects. 190 to 194 will be found at pp. 565-567. They relate to the examination of witnesses and the accused, and also to the adjournment of the inquiry.

**Sect. 215** (250). *Discharge of accused.*—When the evidence of the complainant and of the witnesses for the prosecution, and such examination of the accused person as the Magistrate considers necessary, have been taken, the Magistrate, if he finds that no offence has been proved against the accused person, shall discharge him.

*Explanation I.*—The absence of the complainant, except where the offence may be lawfully compounded, shall not be deemed sufficient ground for a discharge, if there appears other evidence sufficient to substantiate the offence.

*Explanation II.*—A discharge is not equivalent to an acquittal and does not bar the revival of a prosecution for the same offence.

*Explanation III.*—An order of discharge cannot be passed until the evidence of the witnesses named for the prosecution has been taken.

**Note.**—This section overrules the case of *Tuki Mahomed Mundul v. Kisto Nath Rai*, 15 W.R. Crim. 53, and *Reg. v. Gour Mohun Singh*, 16 W.R. Crim. 44; and upholds those of *Reg. v. Sheikh Edoo*, 2 W.R. Crim. 17, and *Denonath Gope v. Saroda Mookho-*

padya, 7 W.R. Crim. 47, which ruled that an order of discharge should not be passed until the evidence of the witnesses named for the prosecution has been taken. The use of the word "cannot" in the third explanation would also prevent the High Court from refusing to interfere with a discharge made under such circumstances, as was done in the case of Santoo Mundle *v.* Abdool Biswas, 13 W.R. Crim. 35.

Where no *prima facie* case has been made out against the accused, and no charge has been drawn up against him, he must be discharged and not acquitted, see Sect. 220, Expl. A magistrate has no authority to acquit any prisoner of an offence under this chapter unless he has been regularly put upon his trial and the prescribed procedure strictly observed, Sect. 220. A magistrate may not discharge a prisoner merely because, on examination of the witnesses, an offence other than or in addition to that charged in the complaint is proved.—Degumber Paul *v.* Kally Doss Dutt, 8 W.R. Crim. 82. Where, under the old Code, a complaint laid before an F.P. magistrate by certain Government *employés*, accused the prisoners of criminal breach of trust in respect of their wages; but, from the evidence adduced, it appeared that the offence of which the prisoners were guilty was criminal breach of trust in respect of Government money, it was held that the magistrate had power to frame a charge against and convict the prisoners of the latter offence without a fresh complaint being laid against them.—Reg. *v.* Dhondu Ramchandra, 5 Bombay H.C. Rep. C.C. 100. See Sect. 216.

But if a magistrate trying a case under the provisions of this chapter is of opinion that there is no case for the interference of a criminal court, he is not only competent but bound to discharge the prisoner.—Niamatulla *v.* Gopal Saha, 6 Ben. L.R. App. 6, and 14 W.R. Crim. 63.

By Sect. 362 the magistrate has a discretion as to summoning all the witnesses named by the complainant.—See Jeldhari Singh *v.* Shunkur Doyal, 23 W.R. Crim. 9.

For the procedure to be observed when the accused, at the time of the commission of the offence or of the trial and investigation, is insane, see Chap. XXXI.

**Sect. 216 (250).** *Charge to be drawn when offence is apparently proved.*—If the Magistrate finds that an offence is apparently proved against the accused person, which such Magistrate is competent to

try, and which, in his opinion, could be adequately punished by him, he shall prepare in writing a charge against the accused person.

*Explanation I.*—The omission to prepare a charge shall not invalidate the trial, if, in the opinion of the Court of appeal or revision, no failure of justice has been occasioned thereby.

*Explanation II.*—If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to prepare a charge, it shall order the trial to be recommenced from the point at which the charge should have been drawn up.

*Explanation III.*—The charge shall be prepared as soon as the Magistrate is of opinion that a *prima facie* case has been established against the accused person, although the whole of the evidence for the prosecution may not have been completed.

**Note.**—The above “Explanation III.” is added by Act xi. of 1874.

**Sect. 217 (251). Plea.**—The charge shall then be read and explained to the accused person, and he shall be asked whether he is guilty or has any defence to make.

**Note.**—In cases tried by the Court of Session, it is expressly provided by Sect. 257 that if the accused plead guilty he may be convicted thereon. There is no such provision in this chapter.

The Session Judge of Coimbatore asked of the High Court of Madras whether a magistrate is bound to take the evidence of a complainant, &c., under this chapter of the Code of Criminal Procedure before preparing the charge, and whether he is not competent in such cases to frame a charge, on hearing complainant's evidence, to call upon the accused to plead, and if he pleads guilty, to record a sentence without further examination; and thereupon the Court made the following ruling:—

“The charge to which the prisoners in this case pleaded guilty, is contained in an additional count, which set forth that they had been previously convicted, and were liable to increased punishment. The sessions' judge thinks that the joint magistrate need not have taken evidence of the previous conviction, but should have proceeded to record a sentence without further inquiry. The joint magistrate, however, submits that chapter xiv. of the Code of Criminal Procedure (chapter xvii. of the present Code) contains no provision authorizing a magistrate to convict upon a plea of

guilty without taking evidence. The High Court observe that under chapter xiv. it seems clear that the whole case for the prosecution should be completed before the charge is prepared, and that the accused cannot be called upon to plead until the charge has been prepared. But in the case under consideration the charge had apparently been prepared, and the accused had pleaded guilty to the second count. If so, the sessions' judge is right in supposing that it was not strictly necessary to go into proof that they were old offenders. It may, however, have been expedient and proper to do so, and the magistrate was quite competent to exercise his discretion in the matter. An ignorant man may plead guilty to a charge of murder under the mistaken impression that all killing is murder; and where, as in the present case, a previous conviction is charged, it may often be of great importance, especially with reference to the Whipping Act, that the precise legal nature of the previous offence should be established by evidence, even after a plea of guilty. The course to be taken by a magistrate before preparing the charge must depend upon the circumstances of each case. It is not necessary for him to examine more witnesses than are sufficient to convince him of the truth of the charge, and with that view it is competent to him under Sects. 202 and 240 (193 of the present Code) to put questions to the accused. The answers given to those questions, if any are given, will generally have a great effect upon the question as to the witnesses necessary to be examined on the part of the prosecution; and if, after the complainant has been examined, questions put to the accused elicit answers which leave no doubt as to the commission of the offence, there seems to be no reason why the magistrate should not then frame the charge, and call upon the accused to plead. The whole proceedings must of course be recorded as required by the Code." But see, however, the case of *Reg. v. Diaz* as to the mode of putting questions to the accused. This latter case, although not now absolutely authoritative, would doubtless be held by the High Courts to be directory, pointing out to inferior courts the principles by which they should be guided.

Under the old Code, the courts held that, although the omission to draw up a charge was a very great irregularity, yet it would form no ground for setting aside the proceedings unless the omission occasioned a failure of justice.—*Reg. v. Kabhai Ravabhai*, 5

Bombay H.C. Rep. C.C. 40. Thus, where the magistrate gave the prisoner clearly to understand what the charge against him was, the omission to draw up a charge was held to be one which did not occasion a failure of justice, and therefore came under Sect. 439 of the old Code.—*Bhugwan v. Dayal Gope*, 10 W.R. Crim. 7. It should, however, be borne in mind by all magistrates and judicial officers, that the omission to draw up a charge is always *an exceedingly grave irregularity*, and may be productive of great injustice to the prosecution as well as to the prisoner.

By Sect. 4, "trial" means the proceedings taken in court after a charge has been drawn up. If the charge be omitted to be drawn up, it would appear the trial commences from that period when in the usual order of things the charge would have been drawn up.

**Sect. 218** (252). *Defence*.—If the accused person has any defence to make to the charge, he shall be called upon to enter upon the same, and to produce his witnesses if in attendance, and shall be allowed to recall and cross-examine the witnesses for the prosecution.

If the accused person puts in any written statement, the Magistrate may file it with the record, but shall not be bound to do so.

**Note**.—If a Magistrate refuse to have the witnesses for the prosecution recalled for cross-examination, though there is no appeal, the High Court as a court of revision can interfere under Sect. 297.—*In re T. R. Belilios*, 19 W.R. Crim. 53.

The accused has in every case a right to recall and cross-examine the witnesses for the prosecution without showing reasonable ground for so doing, and where this right was refused the High Court ordered a new trial.—*Reg. v. Amiruddin Fakeer*, 21 W.R. Crim. 29. See, too, *in re Khurruckdaree Sing*, 22 W.R. Crim. 44, for time of such cross-examination.

**Sect. 219** (253). *Evidence for the Defence*.—The Magistrate shall, subject to the provisions of Sect. 362, summon any witness and examine any evidence that may be offered in behalf of the accused person, to answer or disprove the evidence against him, and may for this purpose, at his discretion, adjourn the trial from time to time, as may be necessary.

**Note**.—The effect of Sect. 214, p. 579, is to import into this chapter the rules enjoined in Sects. 190 to 194, both inclusive, for

the examination of witnesses. They are therefore to be examined in the presence of the accused, who is to be permitted to cross-examine them. Then, if on that examination the magistrate considers it necessary to frame a charge, the accused is to have the right by this section, in aid of his defence, of recalling and further cross-examining the witnesses for the prosecution.—*Madras H.C.* 17th May, 1867, 2 *Madras Jurist*, 323 ; *in re Thakoor Dyal Sen*, 17 *W.R. Crim.* 51.

Under Sect. 362 the magistrate has the power of refusing to summon witnesses in the accused's list, but when using the power he must record his reason for so doing ; and such refusal is open to appeal by the accused. It has been held (by Glover & Loch, J.J.) that the court will quash a sentence upon a prisoner who has not been asked whether he has any witnesses to call, although others charged with him may have been so asked.—*Bhugwan v. Dayal Gope*, 10 *W.R. Crim.* 7. But in a subsequent case, in which this case was not referred to, *L.S. Jackson & Glover, J.J.*, held that where the accused has not his witnesses in attendance, and does not apply to the magistrate to summon them, the omission of the magistrate to require him to produce his witnesses does not prejudice the accused, nor amount to an error or defect calling for interference under Sect. 426 of the old Code.—*Reg. v. Tobaram*, 11 *W.R. Crim.* 15. It is to be noticed that Sect. 253 of the old Code, under which the above case was decided, is identically the same with the present Sect. 219, if the words, "subject to the provisions of Sect. 362," be omitted. So the above case may still hold good ; and on this point the express provision of Sect. 283, the corresponding section to Sect. 426 of the old Code, that, as therein stated, no finding or sentence shall be reversed or altered on appeal on account of the improper admission or rejection of any evidence, is important, no such express provision being found in Sect. 426.

A magistrate is not bound to issue warrant against witnesses who have been summoned and have neglected to attend, unless there is some proof that the summons has been duly served.—*Reg. v. Abdul Ruhman*, 7 *W.R.* 37.

**Sect. 220 (255). *Acquittal—Conviction.***—If the Magistrate finds the accused person not guilty, he shall record judgment of acquittal. If the accused person is convicted, the Magistrate shall pass sentence upon him according to law.

*Explanation.*—If a charge is drawn up, the prisoner must either be acquitted or convicted. If no charge is drawn up, there can be no judgment of acquittal or conviction, except in the case provided for in Explanation I. to Sect. 216.

*Note.*—The explanation added to this section is new, and is in affirmation of the case of *Reg. v. Bissroo Doss*, 8 W.R. Crim. 45. Where a magistrate released an accused person without drawing up a formal charge, or requiring him to plead or make any defence to the charge, it was held that there was no trial before the magistrate and no acquittal of the prisoner, but simply a discharge, and therefore it was competent for the Session Judge to order the committal of the accused.—*Reg. v. Goberdhun Bera*, 12 W.R. Crim. 65. The above ruling would be good under this section, but cases may arise where no charge has been drawn up, and yet a judgment of acquittal or conviction stand—Sect. 216, Expl. I.

A conviction and sentence in the absence of a prisoner are irregular.—*Reg. v. Rajcoomer Singh*, 8 W.R. Crim. 17. Sect. 464, which determines what the judgment shall contain, appears to contemplate the presence of the accused at the time of pronouncing judgment, as it provides that “the judgment or order shall be explained to the accused person or persons affected by it.”

**Sect. 221 (256).** *Procedure when case beyond jurisdiction of Magistrate.*—In any trial before a Magistrate, in which it may appear at any stage of the proceedings that from any cause the case is one which the Magistrate is not competent to try, or one which, in the opinion of such Magistrate, ought to be tried by the Court of Session or High Court, the Magistrate shall stop further proceedings under this chapter, and shall, when he either cannot or ought not to make the accused person over to an officer empowered under Sect. 36, commit the prisoner under the provisions hereinbefore contained. If such Magistrate is not empowered to commit he shall proceed under Sect. 45.



## CHAPTER XVIII.

## OF SUMMARY TRIALS.

**Sect. 222.** *What offences may be tried summarily.*—The Magistrate of the District may try the following offences in a summary way, and, on conviction of the offender, may pass such sentence as may be lawfully inflicted under Sect. 20 of this Code :—

- (1.) Offences referred to in Sect. 148 of this Code.
- (2.) Offences relating to weights and measures under Sects. 264, 265, and 266 of the Indian Penal Code.
- (3.) Hurt, under Sect. 323 of the Indian Penal Code.
- (4.) Theft, under Sect. 379 of the Indian Penal Code, where the value of the property stolen does not exceed fifty rupees.
- (5.) Theft under Sect. 380 of the Indian Penal Code, where the value of the property stolen does not exceed fifty rupees.
- (6.) Theft under Sect. 381 of the Indian Penal Code, where the value of the property stolen does not exceed fifty rupees.
- (7.) Receiving stolen property, under Sect. 411 of the Indian Penal Code.
- (8.) Mischief, under Sect. 427 of the Indian Penal Code.
- (9.) House-trespass, under Sect. 448 of the Indian Penal Code.
- (10.) Insult with intent to provoke a breach of the peace under Sect. 504, and criminal intimidation under Sect. 506, of the Indian Penal Code.

(11.) Abetment of, or attempt to commit (when such attempt is an offence), any of the foregoing offences.

**Note.**—Paragraph 10 slightly differs from its original form, the change having been made by Act xi. of 1874.

The first subdivision of this section relates to any offence triable by the magistrate having jurisdiction in the case, and punishable with fine only, or with-imprisonment for a period not exceeding six

months, or with both. Sects. 379, 380, and 381 relate to simple theft, theft in a dwelling-house, and theft as a servant respectively. The other subdivisions speak for themselves; it may, however, be remarked, that while a limit is placed on the power of a magistrate to try summarily cases of them, by providing that the value of the property must not exceed fifty rupees, no such limit is put upon the trial of persons accused of receiving property. In cases tried under this section, it must appear on the face of the conviction that the case was one coming under the purview of this section, and in a case of theft the value of the property stolen should appear.—*Reg. v. Abheen Pavrida*, 20 W.R. Crim. 17.

Where the accused was charged with stealing fifty rupees and a box in which that sum was contained of the value of eight annas; the magistrate having struck out the charge as to the box on the ground that the box was valueless, and then tried and condemned the accused under this section, the High Court, on appeal, held that he acted without jurisdiction.—*Reg. v. Bugleh Ali*, 22 W.R. Crim. 65.

The procedure under this chapter is only to be followed when a charge is plainly and directly one of those mentioned in this section, or Sect. 225, as the case may be, and magistrates cannot, by the powers conferred on them under this chapter, alter a charge so as to bring the case of the accused within the provisions of this chapter.—*Chunder Shekhur Thakoor v. Nitaloo*, 22 W.R. Crim. 29. But in the case of *Reg. v. Aboo Sheikh*, 23 W.R. Crim. 19, where a prisoner charged with rioting (?) was tried summarily by the magistrate for mischief under the provisions of this chapter, the High Court refused to interfere, on the ground, it would appear, that in the particular case the interests of public justice required no interference.

A magistrate of a district has, and a magistrate of the first class or magistrate of a division of a district may be invested with, power to hold trials under this chapter, Sects. 27, 29, and 30. The proceedings of magistrates unempowered, and trying summarily under this chapter, are void, Sect. 34.

**Sect. 223.** *Power to invest Magistrates with power to try summarily.*—The Local Government may invest any Magistrate of the first class with power to try summarily all or any of the offences mentioned in Sect. 222.

**Sect. 224.** *Power to invest Bench of Magistrates invested with first class magisterial powers.*—The Local Government may invest any Bench of Magistrates invested with the powers of a Magistrate of the first class, with power to try summarily all or any of the offences mentioned in Sect. 222.

**Sect. 225.** *Power to invest Bench of Magistrates invested with less power.*—The Local Government may invest any Bench of Magistrates invested with the powers of a Magistrate of the second or third class with power to try summarily all or any of the following offences :—

Offences coming within Sects. 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, and 447 of the Indian Penal Code; any offences against Municipal Acts, and the Conservancy Clauses of Police Acts punishable with fine or with imprisonment not exceeding one month.

**Note.**—Sect. 277 relates to the defiling the water of a public spring or reservoir; Sect. 278, to making the atmosphere noxious to health; Sect. 279, to driving or riding on a public way so rashly or negligently as to endanger human life; Sect. 285, to dealing with fire or any combustible matter so as to endanger human life; Sect. 286, to so dealing with any explosive substance; Sect. 289, to persons omitting to take order with any animal in their possession so as to guard against danger to human life, &c.; Sect. 290, to public nuisances; Sect. 292, to the sale, &c., of obscene books; Sect. 293, to the possession of obscene books, &c., for sale or exhibition; Sect. 294, to obscene songs; Sect. 323, to voluntarily causing hurt; Sect. 334, to voluntarily causing hurt on grave and sudden provocation; Sect. 336, to the doing of any act which endangers human life, or the personal safety of others; Sect. 341, to the wrongful restraint of any person; Sect. 352, to assault or the use of criminal force; Sect. 426, to mischief; and Sect. 447, to criminal trespass.

**Sect. 226.** *Procedure for summons and warrant cases applicable, with certain exceptions.*—In trials under this chapter the provisions of this Code in regard to summons cases shall be followed in respect of summons cases, and the procedure for warrant cases in respect of warrant cases, with the exceptions hereinafter provided.

**Sect. 227.** *Record in cases where there is no appeal.*—In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses, nor the reasons for passing the judgment, nor draw up a formal charge, but he or they shall

enter in a register, to be kept for the purpose, the following particulars :—

- (a) The serial number ;
- (b) The date of the commission of the offence ;
- (c) The date of the report or complaint ;
- (d) The name of the complainant ;
- (e) The name, parentage, and residence of the accused person ;
- (f) The offence complained of or proved ;
- (g) The prisoner's plea ;
- (h) The finding, and, in the case of a conviction, a brief statement of the reasons therefor ;
- (i) The sentence ; and
- (j) The date on which the proceedings terminated.

**Note.**—See Sect. 274 for cases in which no appeal lies.

**Sect. 228.** *Record in appealable cases.*—If a Magistrate or Bench of Magistrates, acting under Sects. 222, 223, and 224, passes a sentence of more than three months' imprisonment, or of fine exceeding two hundred rupees ;

or if a Bench of Magistrates, acting under Sect 225, convicts any person,

such Magistrate or Bench of Magistrates shall, before passing sentence, record a judgment embodying the substance of the evidence on which the conviction was had, and also the particulars mentioned in Sect. 227.

Such judgment shall be the only record in cases coming within this section.

**Sect. 229.** *Language of judgment.*—Records made under Sect. 227 and judgments recorded under Sect. 228 shall be written by the presiding officer, either in English or in the language of the district in which the trial was held, or, by direction of the Court to which such presiding officer is immediately subordinate, in the language of the presiding officer.

**Sect. 230.** *Bench of Magistrates may be empowered to employ Clerk.*—The Local Government may authorize any Bench of Magistrates, empowered to try offences summarily, to prepare the afore-said record or judgment by means of an officer of such Court, and the record or judgment so prepared shall be signed by each member of such Bench present conducting the proceedings.

**Note.**—The provisions of this chapter are entirely new ; magis-

trates should therefore be very careful in acting upon these sections to conform to all their requirements, otherwise their proceedings may turn out to have been null and void.—See *Reg. v. Johrie Singh*, 22 W.R. Crim. 28. A charge of an offence enumerated in Sects. 222 and 225 is sufficient to give jurisdiction to investigate the charge ; but *legal evidence* of the commission of the offence charged is necessary to justify a conviction. If the evidence discloses an offence not provided for in one of these sections, the case must be treated as governed by the other provisions of the Code. If a portion of the evidence shows the commission of an offence coming within one of these sections, and a further portion so modifies that offence as to constitute it one for which they do not provide, it is doubtful whether a magistrate can disregard or disbelieve that further evidence, and convict summarily, though the weight of authority is rather in favour of his power so to act. Where an information was preferred by a female against a man, for that he “did unlawfully assault and abuse her contrary to the statute,” it was agreed, on the hearing, that the case should be taken as one of aggravated assault under 16 & 17 Vict. c. 30. The evidence, if true, showed that a rape had been committed ; but the justices convicted him, and the Court of Exchequer was equally divided as to whether they had jurisdiction to act as they had done or not.—*Ex parte Thompson*, 30 L.J.N.S.M.C. 19. In *Wilkinson v. Dutton*, 32 L.J.N.S.M.C. 152, a female charged a man, under 24 & 25 Vict. c. 100, s. 42, before justices with an assault, and on her examination deposed not only that he had assaulted her, and hurt her knee, but that he had connection with her, though “she did not consent, and did what she could to resist him.” The other evidence showed that the part of her statement which related to indecent assault was very improbable, and the justices, disbelieving it, convicted him of an assault. It was held that they had jurisdiction to do so, although the evidence, if believed, disclosed a felony.

In appeals from trials under this section where the evidence before the judge is not sufficient to reasonably satisfy him that the prisoner has been rightly convicted, the judge should acquit the prisoner.—*Reg. v. Kheraj Mullah*, 11 B.L.R. 33.

## CHAPTER XIX.

## TRIAL BY COURT OF SESSION.

**Sect. 231** (359). *Cognizance of offences by Court of Session.*—No Court of Session shall take cognizance of any offence, as a Court of original criminal jurisdiction, unless the accused person has been committed by a Magistrate duly empowered in that behalf, except in the cases referred to in Sects. 33, 435, 472, or Sect. 474.

**Note.**—Sect. 472 was the only section originally excepted in this section; Sects. 33, 435, and 474 have been added by Act xi. of 1874.

The fact of a commitment being made by a joint magistrate (who is an officer exercising the powers of a magistrate), is sufficient under this section to enable the Sessions Judge to proceed with the trial, and it lies upon the party impugning the correctness of the proceedings to show that there was no jurisdiction.—*Reg. v. Komurooddee Sikhdar*, 13 W.R. Crim. 17. The only requirement for giving the Court of Session jurisdiction is a charge preferred by some one having authority to commit. Therefore a Court of Session cannot treat as a nullity a commitment by a magistrate, on the ground that he investigated the charge and committed the prisoner without a formal complaint being made to him—*Reg. v. Ranchodas Nathubhai*, 4 Bombay H.C. Rep. C.C. 35; *Reg. v. Sadashivappa Pandurangappa*, 5 *id.* 29: nor yet on the ground of any irregularity or informality in recording the complaint—*Reg. v. Narrengen Naik*, 5 Ben. L.R. 660 (F.B.) The present Code does not practically alter the effect of these rulings: for although Sect. 34 provides that if a magistrate, not being empowered to take up a case without a complaint previously made to him, does so, his proceedings shall be void; yet Sect. 33 provides that a commitment by a magistrate having no

authority on that behalf (the case of one whose proceedings are void) shall not be a nullity unless the accused has been prejudiced by such irregular commitment, or has objected to the jurisdiction of the committing Magistrate during the inquiry and before the committal.

**Sect. 232.** *Trials to be by jury or with assessors.*—All trials before the Court of Session shall be either by jury, or conducted with the aid of two or more assessors.

**Sect. 233** (322). *Local Government may order trials before Court of Session to be by jury.*—The Local Government may order that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury, in any District, and such Local Government may from time to time revoke or alter such order.

Orders passed under this section shall be published in the official Gazette, and in such other manner as the Local Government from time to time directs.

*Explanation.*—If an offence triable with assessors is tried by a jury, the trial shall not on that ground merely be invalid. If an offence triable by a jury is tried with assessors, the trial shall not on that ground merely be invalid, unless objection be taken before the Court records its finding.

**Note.**—Trial by jury ceases in a district when the district ceases to belong to a division to which trial by jury has been extended.—Reg. v. Khooderam, 8 W.R. Crim. 39.

**Sect. 234** (323). *Jury for trial of Europeans or Americans.*—Criminal trials before the Court of Session in which a European (not being a European British subject) or an American is the accused person, or one of the accused persons, shall be by jury.

In such case the jury, if such European or American desire it, shall consist of at least one-half of Europeans, whether European British subjects or not, or Americans, if such a jury can be procured :

Provided that in any District in which the Local Government has not ordered that all trials before the Court of Session, or trials for all offences of the class within which the trial about to take place falls, shall be by jury, such European or American may elect to be tried without jury.

**Note.**—As to the trial of European British subjects, see note to Sect. 78.

**Sect. 235 (360).** *Trial before Court of Session to be conducted by Public Prosecutor.*—In every trial before a Court of Session, the prosecution shall be conducted by the Public Prosecutor, Government Pleader, or by some other officer specially empowered by the Magistrate of the District in that behalf.

**Note.**—It is the duty of the Government pleader or other officer prosecuting to point out to the Court any glaring discrepancy between the evidence given by a witness before the Court of Session and that previously recorded by the committing officer.—*Reg. v. Gunsha Moonda*, 20 W.R. Crim. 38.

In a trial under this section a complainant has a right to name his counsel for the prosecution, and this as against a pleader empowered already to act on that behalf by the magistrate.—*In re Gungadhur Sircar*, 33 W.R. Crim. 14.

The words “and the complainant, if there be a complainant, shall be examined as a witness in the case” which occur in Sect. 360 of the old Code, it will be observed are not found here.

The effect of this section, read with Sects. 59 and 60, is to make every case tried by the Court of Session a case falling within the provisions of Sect. 60; that is to say, the public prosecutor may always avail himself of the services of counsel retained by a private individual, and in so doing he does not deprive himself of the management of the case.—*In re Narayan M. Pendshe*, 11 Bom. H.C.R. 102.

**Sect. 236 (327).** *Number of jury.*—In trials by jury before the Court of Session, the jury shall consist of such uneven number, not being less than three nor more than nine, as the Local Government, by any general order applicable to any particular District or to any particular classes of offences in that District, directs.

**Note.**—Under the old Code the minimum number of the jury was five.

**Sect. 237 (362).** *Commencement of trial — Plea of guilty.*—When the Court is ready to commence the trial, the accused person shall be brought before it, and the charge shall be read and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

If the accused person pleads guilty, the plea shall be recorded, and he may be convicted thereon.

**Note.**—A prisoner should plead to the charge by his mouth, and



not through his counsel or pleader.—Reg. v. Roopa Gowalla, 15 W.R. Crim. 36.

A conviction of a prisoner on a plea of guilty before a Court of Session is valid, although there were no assessors.—Reg. v. Srikanth Charal, 2 Ben. L.R.F.B. 23, and 10 W.R. Crim. 43. In fact, the appointment of assessors in such a case is perfectly useless, as all they could do would be to find the fact which the prisoner has already admitted, and the prisoner is not prejudiced in his defence by their absence.

A person against whom no evidence is produced must be formally arraigned and called upon to plead, and on his pleading not guilty, the judge ought to instruct the assessors that they are bound to find the prisoner not guilty, and a verdict of acquittal should be recorded.—9 W.R.C.L. 5, and Madras H.C. Rulings, 4 Madras H.C. Rep. App. 39.

In a case of causing grievous hurt to B, the prisoner, on hearing the charge read, made a statement in which he said he had had a quarrel with B, and had struck him twice with a stick in consequence; and it was held that the Sessions Judge was wrong in treating this as a plea of guilty to an offence under Sect. 325 of the Indian Penal Code.—Reg. v. Jaipal Koiree, 11 W.R. Crim. 6. Where a defendant pleads guilty, and then goes on to say that he did not commit the offence with which he is charged, the plea is really one of not guilty.—Reg. v. Mittun Chowdhry, 11 W.R. Crim. 53.

When an accused person pleads guilty to a charge already framed, the Sessions Judge has no power to alter the charge upon the evidence in the record. Thus where, upon a charge of murder, the accused pleaded guilty, the Judge has no power to take into consideration the circumstances of the case and reduce the charge to one of culpable homicide, not amounting to murder. But it is open to the Judge not to accept the accused's plea of guilty to a certain offence, but to try him on the evidence forthcoming, and convict for such offence as may be proved; and it is clear that cases might arise in which such a course would be advisable.—Reg. v. Gobardhun Bhugan, 4 Ben. L.R. App. 101, and 13 W.R. Crim. 55.

Where a deaf and dumb prisoner was convicted of an offence, but it appeared that, upon the trial, no attempt was made to communi-

cate with him respecting the charge against him, the High Court at Madras quashed the conviction.—6 Madras H.C. Rep. App. 7. See Sect. 186.

**Sect. 238** (363). *Refusal to plead or claim to be tried.*—If the accused person refuses to, or does not plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed, and to try the case.

**Note.**—The judge must hear the evidence himself, and try the case from the commencement. The accused cannot be convicted at once on a confession made to a magistrate—Reg. v. Hursookh, 2 Alla. 479; nor are the records of another case legal evidence in support of a conviction.—*In re Betts*, 6 Ben. L.R. App. 83.

**Sect. 239** (342). *Assessors how chosen.*—When the trial is to be with assessors, the assessors shall be chosen, as the Judge thinks fit, from the persons summoned to act as assessors.

**Sect. 240** (342). *Jurors to be chosen by lot.*—When the trial is to be by jury, the jury shall be chosen by lot from the persons summoned to act as jurors.

**Sect. 241** (325). *Jury for trial of persons not Europeans or Americans.*—In a trial by jury before the Court of Session of a person not being a European or an American, at least one-half of the jury shall, if the accused person desire it, consist of persons who are neither Europeans nor Americans.

**Sect. 242** (326). *Jury when European or American charged jointly with one of another race.*—In any case before the Court of Session, in which a European or American is charged jointly with a person of any other race, such other person shall, if he desire it, be tried separately if the European or American claims to be tried by a jury consisting of at least one-half of Europeans and Americans.

**Note.**—The Sessions Court having now power in certain cases to try European British subjects, the term European in Sects. 241 and 242 is not limited to Europeans, not being British subjects, as it was in the old Code.

**Sect. 243** (343). *Names of jurors to be called—Objections to jurors.*—As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused person shall be asked if he objects to be tried by such juror.

Objection may then be made to such juror by the accused person

or by the Public Prosecutor, Government Pleader, or other person appointed to conduct the prosecution, and the grounds of objection shall be stated.

Any objection made to a juror shall be decided by the Court, and the decision of the Court shall be final.

If an objection be allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons ; or, if there be no such juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided no objection to such juror or other person be made and allowed.

**Sect. 244 (344).** *Grounds of objection.*—Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed :—

- (1) any ground of disqualification within Sect. 405 ;
- (2) standing in the relation of husband, master or servant, landlord or tenant, to the person alleged to be injured or attempted to be injured by the offence charged, or to the person on whose complaint the prosecution was instituted, or to the person accused ;
- (3) being in the employment of any of such persons ;
- (4) being plaintiff or defendant against any of such persons in any civil suit ;
- (5) having complained against, or having been accused by, any of such persons in any criminal prosecution ;
- (6) any circumstance which, in the judgment of the Court, is likely to cause prejudice against, or favour to, any of such persons, or which renders such person improper as a juror.

**Note.**—The allowing of an objection coming within the last clause of this section is entirely in the discretion of the Court ; but although the judge is not bound to admit the objection, yet he should not treat it as frivolous.—*Reg. v. Krishna Kurn*, 16 W.R. Crim. 66.

**Sect. 245 (345).** *Juror to understand the language in which evidence is given or interpreted.*—The Judge shall not allow any person to serve on the jury unless such person understands the language in which the evidence is given or interpreted.

**Sect. 246 (346).** *Foreman of jury.*—When the jury has been completed, they shall appoint one of their number to be foreman. It shall be the duty of the foreman to preside in the debates of the jury, to deliver the verdict of the jury, and to ask any information

from the Court that may be required by the jury. If a majority of the jury do not agree in the appointment of a foreman, he shall be named by the Court.

**Note.**—Under the old Code, it was ruled that there was no necessity to swear the jurors in a trial before the Court of Session.—Reg. v. Lakshuman Ram Chandra, 3 Bombay H.C. Rep. C.C. 56, decided after reference to the High Court in Calcutta as to the practice in Bengal. Act x. of 1873, however, provides that oaths or affirmations shall be made by jurors—Sect. 5 (c); according to such forms as the High Court shall prescribe—Sect. 7; but it further provides, in Sect. 13, that proceedings and evidence shall not be invalidated by the omission of, or irregularity in the administration of, an oath or affirmation.

**Sect. 247.** *Examination of witnesses.*—*The person conducting the prosecution shall then open his case, and the witnesses shall then be examined, cross-examined, and re-examined, according to the law for the time being relating to the examination of witnesses.*

**Note.**—The words, “The person . . . open his case, and,” are added by Act xi. of 1874.

Chapter x. of the Evidence Act, 1872, lays down the rules for the examination of witnesses; and Sect. 166 of that Act provides that, “in cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the judge, which the judge himself might put, and which he considers proper;” and the questions which the judge can put, under the provisions of Sect. 165, are “any questions he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant,” but only for the purpose of discovering or obtaining proper proof of relevant facts; and the judgment must be based upon facts declared by the Evidence Act, 1872, to be relevant and duly proved.

**Sect. 248 (366).** *Examination of accused before Magistrate to be evidence.*—The examination of the accused person before the committing Magistrate shall be given in evidence at the trial.

**Note.**—The latter portion of Sect. 366 of the old Code is now to be found in Sect. 80 of the Evidence Act, which provides in more specific terms than the former section did as to what is to be presumed in respect to records of evidence, &c.: “Whenever any document is produced before any court, *purporting* to be a record or memorandum of the evidence, or any part of the evidence, given

by witnesses in a judicial proceeding, or before any officer authorised by law to take such evidence, or to be a statement or confession by any prisoner or accused person taken in accordance with law, and purporting to be signed by any judge or magistrate, or by any such officer as aforesaid, the court shall presume"—

1. That the document is genuine;

2. That any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and

3. That such evidence, statement, or confession was duly taken.

The whole of the examination of the prisoner should be read out—5 Madras H.C. Rep. App. 4; and the examination put in evidence, whether it tells for or against the prisoner, is not in the discretion of the prosecution to put in the examination or not, according to their own caprice—Reg. v. Sheikh Meher Chand, 13 W.R. Crim. 63.

There is no necessity for the judge to read out to prisoners confessions made by them before the magistrate, and ask them if they have any objection to their reception. All that is required is, that the judge should see that the requirements of Sect. 366 (now Sect. 80 of the Evidence Act) have been complied with, and if so, that is *prima facie* evidence of the correctness of the examination or confession.—Reg. v. Misser Sheikh, 14 W.R. Crim. 9, and Reg. v. Jaga Poly, 11 W.R. Crim. 39.

The notes of an inquiry before a registering officer are not admissible as evidence of what the prisoner said on that occasion.—Reg. v. Permanund Barick, 11 W.R. Crim. 13.

**Sect. 249.** *Evidence given at the preliminary inquiry admissible.*—When a witness is produced before the Court of Session or before the High Court in the exercise of its original or appellate criminal jurisdiction, the evidence given by him before the committing Magistrate may, in the discretion of the presiding Judge, be treated as evidence in the case, if it was duly taken in the presence of the accused person.

*Explanation.*—This section shall not authorize the Court to refer to the record of the evidence given by a witness who is absent, except in the cases in which such evidence may be referred to under the Indian Evidence Act or other law in force for the time being upon the subject of evidence.

**Note.**—This section in its original form stood as follows : “When a witness is produced before the Court of Session or High Court, the evidence given by him before the committing magistrate may be referred to by the court, if it was duly taken in the presence of the accused person, and the court may, if it think fit, ground its judgment thereon, although the witnesses may at the trial make statements inconsistent therewith.” Under the section as it originally stood, it was held that it did not apply in cases where the witnesses did not simply “make statements inconsistent” with their evidence given before the committing magistrate, but gave evidence before the Court of Session or High Court *directly contradictory* to that given before the committing magistrate; and that the evidence given before the committing magistrate must be in some degree corroborated by that given before the Court of Session or High Court for the section to apply.—*Reg. v. Amanullah*, 21 W.R. Crim. 49, and 12 B.L.R. App. 17. But under the section as it at present stands (amended by Act xi. of 1874) the above case no longer holds good, and, subject to the discretion of the judge, evidence of witnesses given before the committing magistrate may be taken as evidence in the case before the sessions, whether those witnesses in the Sessions Court directly contradict their evidence given before the committing magistrate or not. The section as it now stands will tend also to shorten the hearing of cases before the Court of Sessions, as the mere production of certain witnesses without examination will frequently be sufficient; the section doing away with the necessity of their examination where the evidence before the committing magistrate can with safety be treated as evidence in the case before the sessions.

Sect. 33 of the Evidence Act i. of 1872 determines when such evidence as that referred to in the Explanation to this section may be referred to. This section (249) is subject to the provisions of Sects. 323 and 325, by which the evidence of a medical witness, when absent, and the report of a chemical examiner, may be given in evidence in any criminal trial.

Where the session judge acts on the discretion vested in him by this section, such exercise of his discretion, considered as a matter of fact or law, is open to review by the Appellate Court.

In the case of *R. v. Majohur Roy* (24 W.R. Crim. 11), Markby, J., held that this section has no operation whatever unless a wit-

ness at the trial make statements inconsistent with his deposition before the magistrate, and that then, and then only, the Court may refer to his previous deposition for the purpose of convicting or acquitting the prisoner at the Sessions trial.

**Sect. 250 (373).** *Examination of accused.*—The Court may, from time to time, at any stage of the trial, examine the accused person, and shall question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

**Sect. 251 (372, 374).** *Defence.*—When the examination of the witnesses for the prosecution and the examination of the accused person is concluded, the accused person shall be asked whether he means to call witnesses. If he says that he does not, the prosecutor may sum up his case. The Court may then, if it thinks that there are no grounds for proceeding, in a case tried with assessors, record a finding, or, in a case tried by a jury, instruct the jury to return a verdict of acquittal.

If the Court considers that there are grounds for proceeding, it shall call on the accused person to state his grounds of defence and produce his witnesses.

The accused person or his Counsel or authorized Agent may then state the case for the defence, and may examine the witnesses, if any, produced for the defence, and at the conclusion of such examination may sum up his case.

**Note.**—It has been decided that under this section an accused person tried before the Court of Session must either be convicted or acquitted. An order for the *discharge* of a prisoner can be made by a magistrate under Sects. 195 or 215; but it appears such power has not been given to the Court of Session, the assumption apparently being that the preliminary investigation has established a *prima facie* case against the accused.—*In re Jugga Mohun Patak*, 5 R.C.C. Circ. 9. As the law now stands, even where the prosecution has failed to establish a complete case, conviction may follow on what the accused says in his defence.—*Reg. v. Pora Nashyo*, 5 R.C.C. 55.

When a judgment of acquittal is recorded under this section, it is not necessary to record the opinion of the assessors.—*Reg. v. Parvati*, 7 Bom. C.C. 82. Under this section, if there is evidence against the prisoner, the judge has no right to pronounce his own

judgment upon the credibility of such evidence, and to withdraw from the jury the consideration of the due weight to be given to it.—*In re Huroo Shaha*, 16 W.R. Crim. 20.

The prisoner is to be distinctly asked at the end of the case for the prosecution to produce his evidence, and it is at that point the duty of the Court of Session to ascertain who the witnesses are whom the prisoner desires to examine in his defence—*Reg. v. Mookun*, 12 W.R. Crim. 22; and it is irregular to allow a witness to be examined on behalf of the prosecution after the prisoner has made his defence, when such witness is not called to contradict any new case set up by the prisoner in his defence. When, however, the prisoner had full notice of the evidence which was to be given by such witness, and in his defence had alluded to and commented on the evidence probably to be given by the witness, the High Court refused to set aside the conviction, as the prisoner had not been prejudiced by the irregularity.—*Reg. v. Sham Kishore Holdar*, 13 W.R. Crim. 36.

A record of a Sessions trial should contain the record of the statement, if any, made by the prisoner in defence; and if he does not voluntarily make any statement, and declines to answer any question put by the court, the fact should be noted; and where there is nothing else to show the nature of the defence, a note of the address to the court, if any, under 374, should be recorded.—*Reg. v. Gopal Hajjram*, 15 W.C. Crim. 16.

Authorized agent means any person not a barrister, attorney, or pleader, authorized by permission of the court to assist the accused in his defence. Sect. 186.

**Sect. 252 (376).** *Prosecutor's right of reply.*—If any evidence is adduced on behalf of the accused person, the officer conducting the prosecution shall be entitled to reply.

**Sect. 253.** *View by jury or assessors.*—Whenever, in the opinion of the Court, it is proper and convenient that the jury or assessors should view the place in which the offence charged is said to have been committed, or any other place in which any other transaction material to the inquiry in the trial took place, an order shall be made to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place which shall be shown to them by a person appointed by the Court.

**Sect. 254 (350).** *Procedure when juror becomes unable to attend.*



—If in the course of a trial by jury at any time prior to the finding any juror, from any sufficient cause, is prevented from attending through the trial, or if any juror absents himself, and it is not possible to enforce his attendance, a new juror shall be added, or the jury shall be discharged, and a new jury empanelled, and in either case the trial shall commence anew.

**Sect. 255 (379).** *Assessors' opinion and charge to jury.*—When the case for the defence and the prosecutor's reply, if any, are concluded, the Court shall proceed—

in cases tried with assessors, to ask the assessors their opinion, and shall record it :

in cases tried by jury, to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

A statement of the Judge's direction to the jury shall form part of the record.

**Note.**—In a case where the opinions of the assessors recorded did not go to the guilt of the prisoner on the charges alleged against him, the High Court ordered the proceedings to be reopened that the assessors might give their opinions as required by the Code.—Reg. v. Matem Mal, 22 W.R. Crim. 34.

There is no need to sum up the evidence in a trial with assessors.—Reg. v. Jaga Poly, 11 W.R. Crim. 39. But in a long and complicated case there is no reason why the judge should not sum up to the assessors.—Reg. v. Amiruddin, 7 Ben. R. 63, and 15 W.R. Crim. 25.

On a trial by jury the Sessions Judge, in summing up, should give a full and detailed statement of the evidence on both sides; he should point out the legal bearing of it, and what weight the jury ought to attach to its several parts. His omission to do so, *if the accused is thereby prejudiced*, amounts to such an error in law as would justify a Court of Appeal in setting aside the verdict. No general rule can, however, be laid down as to when a prisoner is prejudiced by a defective summing up; but in general, if the finding of a jury in such a case is one that a Court of Appeal would set aside if the trial had taken place with the aid of assessors, the Court will interfere and set aside the verdict. In capital cases and all cases of a serious or complicated nature the judge ought to read over the evidence *in extenso* to the jury.—Reg. v. Fatteechund

Vastachund, 5 Bom. H.C. Rep. C.C. 85. See also *Reg. v. Sheik Miyavalad Dana*, 6 Bom. H.C. Rep. C.C. 10; *Reg. v. Mathoor Singh*, 18 W.R. Crim. 66.

As to the requisites of a charge in a case of culpable homicide, see *Reg. v. Ameer Khan* (nota to Sect. 307 of the Penal Code, *supra*).

Where a summing up of a judge points out to the jury the principal features of the evidence as regards both the case of the crown and the defence of the prisoner, the requisites of this section are complied with. The judge is not called upon to repeat to the jury every word of every witness. He must use an intelligent discretion as to how he ought to put the substance of the evidence before the jury, and the High Court will not interfere with the result of the trial unless it sees that the judge has manifestly put the evidence in such a way as was likely to mislead the jury.—*Reg. v. Sheppard*, 13 W.R. Crim. 23. Where the provisions of this section are neglected, and the judge practically does not sum up the evidence at all to the jury, but decides the case himself, a new trial will be ordered.—*Reg. v. Shumsere Beg*, 9 W.R. Crim. 51.

**Sect. 256. Duty of Judge.**—It is the duty of the Judge to decide all questions of law, and especially all questions as to the relevancy of facts which it is proposed to prove, the admissibility of evidence or the propriety of questions asked by parties or their agents which may arise in the course of the trial; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

to decide upon the meaning and construction of all documents given in evidence at the trial;

to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

to decide whether any question which arises is for himself or for the jury; and upon this point his decision shall be final.

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact relevant to the proceeding.

### *Illustrations.*

- (a) It is proposed to prove a statement made by a person not called as a witness under circumstances which render evidence of his statement admissible.

It is for the Judge and not for the jury to decide whether the existence of those circumstances has been proved.

- (b) It is proposed to give secondary evidence of a document, the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

**Note.**—The powers of the judge as to putting questions and ordering production of documents in both civil and criminal matters are defined by Sect. 165 of the Indian Evidence Act (Act i. of 1872); and the section of the C.P. Code under consideration, by the words “and, in his discretion, to prevent the introduction of inadmissible evidence, whether it is or is not objected to by the parties,” gives a further particular extension of power in criminal proceedings which is not given generally by the section of the Evidence Act we have referred to. As to the relevancy of facts, see Sects. 5 to 16 of the Indian Evidence Act. By this section far more extensive powers are given to judges here than in England, and Mr Stephen, on the occasion of the Evidence Act becoming law, gave reasons for this.—See ‘Proceedings of the Legislative Council of India,’ p. 240 of the ‘Supplement to the Gazette of India,’ March 30, 1872.

Before the passing of this Act it was held that it is the duty of a judge to aid the jury in the arrangement of facts, and to direct their attention to the points of law which it is necessary for them to bear in mind in order to judge between the prisoner and the crown, and not himself to find facts which have been left to the jury.—Reg. v. Ramgopal Dhur, 10 S.W.R. Crim. 7; that in charging a jury a Sessions judge should not tell them that the prisoners had previously been bad characters.—Reg. v. Kulum Sheik, 10 W.R. Crim. 39; that a Sessions judge, in summing up, is bound to advise the jury on questions of fact, and may tell the jury the impression which the evidence has made upon his own mind.—Reg. v. Dwarkanath Sen, 13 W.R.; and that a judge should not introduce into his summing up any question as to recommending a prisoner to mercy, but should leave that entirely to the jury.—14 W.R. Crim. 46.

**Sect. 257. Duty of jury.**—It is the duty of the jury—(1) to decide which view of the facts is true, and then to return the verdict which under such view ought, according to the direction of the

Judge, to be returned; (2) to determine the meaning of all technical terms and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not; (3) to decide all questions declared by the Indian Penal Code or any other law to be questions of fact; (4) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

*Illustrations.*

(a) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted. It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(b) The question is whether a person entertained a reasonable belief on a particular point. Whether work was done with reasonable skill, or due diligence. Each of these is a question for the jury.

**Sect. 258.** *When juryman or assessor may be examined.*—If a juryman or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be examined, cross-examined, and re-examined in the same manner as any other witness.

**Sect. 259 (353).** *Procedure when assessor is unable to attend.*—If in the course of a trial with the aid of assessors, at any time prior to the finding, any assessor is, from any sufficient cause, prevented from attending through the trial, the trial shall proceed with the aid of the other assessor or assessors. If all the assessors are prevented from attending through the trial, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh assessors.

**Note.**—Sect. 414 determines the penalty that a juror or assessor is liable to on non-attendance. There is no appeal against a fine under this section.—*In re Gour Surun Dass*, 8 W.R. Crim. 83.

**Sect. 260** (378). *Jury or assessors to attend at adjourned sitting.*—If a trial is adjourned, the jury or assessors shall be required to attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

**Sect. 261.** *Cases tried with assessors.*—In cases tried with assessors, the Court shall proceed to pass judgment of acquittal or conviction, having considered the opinions of the assessors, but not being bound to conform to them. If the accused person is convicted, the Court shall proceed to pass sentence on him according to law.

**Sect. 262** (324). *Decision vested in Judge.*—The opinion of each assessor shall be given orally, and shall be recorded in writing by the Court; but the decision is vested exclusively in the Judge.

**Note.**—Sect. 232 determines that the number of assessors should be two or more.

**Sect. 263** (352, 380). *Cases tried by juries.*—In cases tried by jury, the jury may retire to consider their verdict. It shall be the duty of an officer of the Court not to suffer any person to speak to or hold any communication with any member of such jury. When the jury have considered their verdict, the foreman shall inform the Court what is their verdict, or what is the verdict of a majority.

*Verdict to be given on each charge.*—*Judge may question jury.*—The jury shall return a verdict on all the charges on which the accused is tried, and the Court may ask them such questions as are necessary to ascertain what their verdict is. Such questions and the answers to them shall be recorded.

*Procedure where jury differ.*—If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

If the Court does not think it necessary to dissent from the verdict of the jurors, or of a majority of the jurors, it shall give judgment accordingly. If the accused person is acquitted, the Court shall record judgment of acquittal. If the accused person is con-

victed, the Court shall proceed to pass sentence on him according to law.

If the Court disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the prisoner has been tried, and considers it necessary for the ends of justice to do so, it may submit the case to the High Court. If the Court does so, it shall not record judgment of acquittal or of conviction on any of the charges on which the prisoner has been tried; but it may either remand him to custody or admit him to bail.

The High Court shall deal with the case so submitted as it would deal with an appeal, but it may acquit or convict the accused person on the facts as well as law, without reference to the particular charges as to which the Court of Session may have disagreed with the verdict; and if it convict him, shall pass such sentence as might have been passed by the Court of Session.

**Note.**—The words “of the jurors or” are added by Act xi. of 1874; and the last two paragraphs are substituted for slightly different paragraphs by the same Act.

If a prisoner convicted at a trial by jury prefer an appeal against his conviction himself, he can only do so on a point of law (Sect. 271). So if such a case is submitted to the High Court through the intervention of a judge under this section, the prisoner is in a more advantageous position,—a submission under this section opening up questions of fact as well as law, the words of this section “shall deal with the case so submitted as with an appeal,” simply directing the procedure to be followed, and not that such a submission shall be in all respects considered and situated as an appeal.—*Reg. v. Koonjo Leth*, 20 W.R. Crim. 1; and 11 B.L.R. 14. In the preceding case, as in that following, the High Court upset an acquittal by a jury, and convicted on the facts.—*Reg. v. Sidham Sircar*, 20 W.R. Crim. 16. The unanimous verdict of a jury should not be set aside under this section unless clearly wrong and unsustainable on the evidence.—*Reg. v. Nobin Chunder Banerji*, 20 W.R. Crim. 70; and 13 B.L.R. 20; *Reg. v. Sham Bagdee*, 20 W.R. Crim. 73; and 13 B.L.R. 19; and *Reg. v. Haroo Manjhee*, 21 W.R. Crim. 4; and see *Reg. v. Mussamut Itwarya*, 14 B.L.R. App. 1, where the verdict of the jury was upheld.

In the case of a trial with assessors, the judge's omission to state the ground of his decision does not prejudice the accused, and

therefore, under Sect. 283 (426 of the old Act), is not an irregularity which invalidates the conviction.—Reg. *v.* Kala Karsan, 6 Bom. H.C. Reps. C.C. 55. The same principles as those laid down in the case of Reg. *v.* Fatteechund Vastachund (*sup.* p. 602) are applicable to appeals from convictions or trials by jury where illegal evidence has been admitted. In these cases the Court should consider whether the illegal evidence admitted is such as is likely to have exercised a prejudicial influence on the minds of the jury, and if the Court be of opinion such is the case, it will treat the matter as if it had been tried by a Sessions judge with the aid of assessors. If the evidence (after omitting that portion of it which should have been rejected) is sufficient to sustain the verdict, the conviction will be upheld. In exceptional cases, where the evidence is of such a character as to suggest the consideration that its real nature cannot be fairly appreciated except by a Court which has heard that evidence given, a new trial will be directed.—Reg. *v.* Ramswami Mudliar, 6 Bom. H.C. Reps. 47.

If a prisoner be charged on two heads, the Sessions judge has no power, after the jury have convicted on one head and acquitted on the other, to require the jury to reconsider their verdict.—Reg. *v.* Joy Krishto Ghosamee, 7 W.R. Crim. 22. A prisoner is entitled to be discharged from custody immediately on a judgment of acquittal being pronounced when there is no further charge pending against him, and his further detention is illegal. No formal warrant is necessary for his discharge.—Madras H.C. Rulings, 5 Mad. H.C. Reps. App. 2.

Where a case was referred to the High Court under this section, notice was given to the accused that the High Court was about to deal with the case, it being considered that in fairness such notice should be given that the accused might bring possible objections to the judge's submission of the case to the High Court, doubt was expressed whether such notice was required by law.—Reg. *v.* Ootam Dhoba, 19 W.R. Crim. 38.

According to Sect. 24 of the Indian Evidence Act, a confession is inadmissible only if the court consider it to have been induced by illegal pressure. Where the Session Judge did not consider a confession to have been so induced, the High Court, upon a reference under Sect. 263 of the Code of Criminal Procedure, held it to have been properly admitted, and finding it to be full and clear,

and supported by reliable evidence, acted upon it by convicting the person who made it, notwithstanding his retraction of it in the Court of Session, and his being found not guilty by the jury.—*R. v. Balvant v. Pendharkar*, 11 Bom. H.C.R. 137.

This section casts upon the High Court the duty both of judge and jury; but notwithstanding this difference, which clothes it with greater powers and responsibilities than the superior courts in England, it will, as far as may be, be guided by the principle of English law, that the verdict of a jury will not be set aside unless it be perverse and patently wrong, or may have been induced by an error of the judge. In a proper case, however, the High Court will rectify the verdict of a jury.—*R. v. Khandarav Bajiran*, 1 In.L.R. Bom. 11.

**Sect. 264 (377).** *Adjournment.—Postponement of trial.*—The Court may, in its discretion, postpone the hearing of the case; and may, from time to time, adjourn the trial, if he considers that such adjournment is proper and will promote the ends of justice.

**Note.**—At each periodical session all persons awaiting trial should be brought before the judge in open court. If the public prosecutor should not be prepared to go to trial in any particular case, he should be prepared to show cause, properly supported, why the accused should not be acquitted and released, the accused himself being bound to answer to such cause shown. When a trial is postponed, the ground of postponement should be justly stated in the column of remarks in the statement of Sessions trials furnished to the High Court.—*Cal. H. Crt. Cir. 4*, 6th May 1868.

If a trial has been postponed after some of the evidence has been taken, and the Sessions judge presiding at that trial has vacated his office without concluding it, his successor cannot proceed with the trial at that stage, but must commence it *de novo*.—*Reg. v. Charroo*, *Suth. Rep.* 1864, p. 32.

**Sect. 265 (347).** *The same jury or assessors may try in succession several offenders.*—The same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as to the Court seems fit.

**Note.**—Ordinarily there should be a change of assessors after every third or fourth case.—*Mad. H.C.*, 11th Feb. 1862.



## PART VI.

### APPEAL, REFERENCE, AND REVISION.

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#### CHAPTER XX.

##### APPEALS.

**Sect. 266 (412).** *Appeals from officers exercising powers less than those of a Magistrate of the first class.*—Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced by a competent magistrate of the second class under Sect. 46, may appeal to the Magistrate of the District, or to a Magistrate of the first class who has been empowered by the Local Government to hear such appeal.

**Note.**—Government may, by proclamation, declare and direct that an assistant collector in charge of the collectorate during the absence of the collector shall be, during that period, “the chief officer charged with the executive administration of the district in criminal matters,” and such officer, it would appear, is under this Act the magistrate of the district, and so may hear appeals under this section.—*Reg. v. Bhaisankar Hariram*, 3 Bom. H.C. Rep. C.C. 18. See Sect. 35 of this and Sect. 14 of the old Act. A deputy commissioner in a non-regulation province is in the position of a magistrate of the district, and so can hear appeals provided for by this section.—*In re Boron Dhooi*, 16 W.R. Crim. 1.

Thirty days from the date of sentence is the limit within which the appeal must be brought (Act ix. of 1871, sch. 2, art. 152), but sufficient cause being shown, the court will allow the appeal to

be presented after this time, Sect. 5 (b) of Act ix. of 1871. In computing the time during which it is competent to a defendant to appeal against the sentence of a magistrate, the number of days taken by the court to prepare a copy of the sentence should be omitted.—*In re Toti Chengan*, 6 Mad. H.C. Reps. Crim. Ap. Ju. 349. An appellate court is bound precisely in the same way as a court of first instance to test evidence extrinsically as well as intrinsically.—*In re Goomanee*, 17 W.R. Crim. 59. The proceedings of a magistrate hearing an appeal under this section, and not being duly empowered, will be void. Sect. 34.

**Sect. 267** (409). *Appeals in bad livelihood cases.*—Any person required by a Magistrate of the first class to give security for good behaviour, under Sect. 504 or Sect. 505, may appeal to the Magistrate of the District.

**Note.**—There is no appeal against an order of this character when made by a magistrate of the district.—Sect. 286 (d).

**Sect. 268** (413, 414). *Appeals from convictions in contempt cases.*—Any person convicted by any Civil, Criminal, or Revenue Court, under Chapter XXXII. of this Act, may appeal to the Court to which decrees or orders made in such court are ordinarily appealable, whatever may be the amount of the sentence passed, subject to the rules provided in Sects. 275, 277, 278, 280, 281, and 282. An appeal from such conviction by a Small Cause Court may be made to the Court of Session within whose Sessions Division such Court is situate.

**Note.**—A person convicted under Sect. 228 of the Indian Penal Code for intentional insult, is a person convicted within the meaning of this section, and an appeal therefore lies from the order of the Sessions Court.—*Reg. v. Chappu Menon*, 4 Mad. H.C. Reps. 146. This equally applies to persons convicted under Sect. 435 of this Act.

**Sect. 269** (409). *Appeal from Magistrates.*—Any person convicted on a trial held by the Magistrate of the District or other Magistrate of the first class, or any person sentenced under Sect. 46 by a competent Magistrate of the first class, may appeal to the Court of Session.

The appellant shall in every case give notice of appeal to the Magistrate of the District, who shall, if necessary, instruct the Public Prosecutor, Government Pleader, or other officer empowered

by Government or by the Magistrate of the District to prosecute the case.

**Note.**—A Sessions Judge cannot, on appeal from a magistrate's decision, inflict a term of imprisonment in commutation of a fine longer than that which the magistrate himself could have inflicted.—*Reg. v. Hari bin Vithoji*, 1 Bom. H.C. Rep. C.C. 139. There is no appeal under this section, unless the sentence in question exceed one month or fifty Rupees, or is for whipping only.—Sect. 273; and see Sect. 286.

**Sect. 270.** *Appeals by persons convicted by officers invested under Section 36.*—Any person, convicted on a trial held by any officer invested with the power described in Sect. 36, may appeal to the High Court, if it appear from the sentence awarded that such officer was in such trial exercising such special powers. No appeal in such case shall lie to the Court of Session.

*Appeals from convictions of Assistant Sessions Judges.*—Any person convicted by an Assistant Session Judge may appeal to the Sessions Judge if the sentence appealed against does not exceed three years' imprisonment.

A sentence of an Assistant Sessions Judge confirmed, under Sect. 18, by the Sessions Judge may be appealed to the High Court.

**Note.**—If the person be convicted on such a trial as herein mentioned without the officer trying the case exercising his special powers in the conviction, the appeal is to the Court of Session. Only where such officer has exercised the powers given him by Sect. 36 does the appeal lie to the High Court.—*Reg. v. Dhona Bhooya*, 5 B.L.R. 658, and 14 W.R. Crim. 33—full bench; and see *Reg. v. Bhaishankar Hariram*, 3 Bom. H.C. Rep. C.C. 18, Note to Sect. 266. Sixty days is the time within which an appeal to the High Court must be presented, and thirty days the time for an appeal to the Court of Session.—Act ix. of 1871, sch. 2, art. 152, 153. This time may be extended.—Sect. 5 (b) of Act ix. of 1871; and see Note to Sect. 266.

**Sect. 271 (408).** *Appeal from sentence of Session Judge.*—Any person convicted on a trial held by a Sessions Judge may appeal to the High Court.

An appeal may lie on a matter of fact as well as a matter of law, except where the conviction was in a trial by jury, in which case the appeal shall be admissible on a matter of law only.

**Sect. 271A.** *Procedure in case of sentence of death.*—When any such person is sentenced to death, the Sessions Court shall give him a copy of the sentence and inform him that if he wishes to appeal, his appeal must be made within seven days ; and the Court shall delay the transmission of the reference hereinafter required for a reasonable time, not exceeding seven days, to allow of the appeal and reference being made at the same time.

“When it appears that the execution of the sentence should not be delayed, the Sessions Court may forward the reference at once, recording its reasons for so doing.”

**Sect. 271B.** *Procedure where Judges of Court of appeal, &c., are equally divided.*—Where the Judges composing the Court of appeal, reference, or revision are equally divided, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

**Note.**—The above three sections are substituted by Act xi. of 1874 for the one original Sect. 271. The last paragraph of Sect. 271 as it originally stood was as follows : “When, under the provisions of the law in force, judgments or orders made or passed by the High Court are made or passed, either in appeal, reference, or revision, by a court consisting of more than one judge, any difference of opinion shall be settled by adding, when the High Court is composed of more than two judges, and the court is equally divided, one or more judges, and in such event the judgment or order shall follow the opinion of the majority of the judges.” This repealed provision is replaced by Sect. 271B.

As an appeal against the verdict of a jury is restricted to points of law, the petition should state specifically in what respect the law has been contravened.—*Reg. v. Gopal Bhareewallah*, 1 W.R. 21. A jury may be satisfied with a minimum of proof ; but when there is nothing which can, if believed, amount to proof, the case should not be put to the jury, as a verdict of guilty cannot under such circumstances be sustained.—*Reg. v. Ruton Dass*, 16 W.R. Crim. 19. This section does not apply to the case of a person whose appeal has been heard and further evidence taken, and judgment and sentence passed by the appellate court, under Sect. 282.—And see *Reg. v. Dhunover Ghose*, 15 W.R. Crim. 33.

Criminal appeals to the High Court, Calcutta, may be disposed of by one judge, and no second petition of appeal can be allowed to be considered after a first one has been rejected by a single judge.—*Reg. v. Chundro Joagi*, 17 W.R. Crim. 47.

**Sect. 272** (407). *No appeal in case of acquittal, except on behalf of Government.*—The Local Government may direct an appeal by the Public Prosecutor or other officer specially or generally appointed in this behalf, from an original or appellate judgment of acquittal; but in no other case shall there be an appeal from a judgment of acquittal passed in any Criminal Court.

Such appeal shall lie to the High Court. No appeal shall be presented under this section after six months from the date of the judgment complained of.

The High Court may in any case so appealed direct a new trial by another Court, or may pass such judgment, sentence, or order, as may be warranted by law.

**Note.**—As it originally stood, the rules of limitation did not apply to appeals under this section. The substitution of the limitation of six months is under Act xi. of 1874.

Where the Sessions Judge might, upon appeal, have convicted the defendants under a different section of an Act from that under which they were convicted by the magistrate, but instead of doing so, acquitted them, the High Court, on appeal by the local government under this section, refused to interfere.—*In re Govt. Pleader*, 7 Mad. H.C. Reps. Ap. Jur. 339. In the judgment of the High Court in this case, it was stated: "The course to be taken would probably be the ordering of a new trial, if we thought it desirable. We think, however, that the exercise of our discretion in such a matter requires that we should be satisfied that the case is of sufficient consequence to justify us in acting under this very exceptional section."

In an appeal by the Bengal Government under this section, in a case tried by assessors, where the prisoner, accused of culpable homicide, not amounting to murder, had been acquitted by the Sessions Judge, one assessor being in favour of conviction, the High Court set aside the order of acquittal and convicted the accused.—*Govt. of Bengal v. Haneef Fakeer*, 23 W.R. Crim. 50. Where the appellate court decides to hear the appeal, notice must be given to the respondent. See Sect. 279.

**Sect. 273** (411). *No appeal in petty cases.*—There shall be no appeal in cases in which a Court of Session, or the Magistrate of a District or other Magistrate of the first class, passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

There shall be no appeal from a sentence of imprisonment passed by such Court or officer in default of payment of fine when no substantive sentence of imprisonment has been passed.

Where an accused person has been convicted on his own plea, whether on a trial with assessors or by jury, there is no appeal, except as to the extent or legality of the sentence.

**Note.**—Where a prisoner was in three *separate* cases sentenced in each to suffer fifteen days' imprisonment, it was held that, although these three sentences in the aggregate amounted to more than a month, he would have no right to appeal—Reg. v. Morly Sheikh, 6 W.R. 51, and Reg. v. Nagardi Parani, 1 B.L.R.A. Cr. J. 3; but where, on the *same* evidence, a magistrate passed two sentences, it was held that the sentences were cumulative and illegal; but the court added that, supposing the two sentences to have been legal, inasmuch as the sentences were founded on the same evidence, and the aggregate of punishment was beyond the limit within which the power of appeal was refused, an appeal would lie.—Meelun Khalif v. Dwarkanath Goopto, 1 W.R. 7.

Where several persons were convicted of rioting, and two of them were sentenced to pay each a fine of fifty rupees, or in default undergo rigorous imprisonment for a month, and the others were sentenced to a severe punishment, the Sessions Judge entertained an appeal by all the prisoners; but the High Court annulled the order of the Sessions Judge passed with reference to those of the accused who had only been fined fifty rupees, and restored the original sentences passed upon them.—Reg. v. Kalubhai Megabhai, 7 Bom. H.C. Reps. C.C. 35. This section does not apply to convictions under cap. 32. See Sect. 268.

**Sect. 274.** *Appeals from summary convictions.*—There shall be no appeal in cases tried summarily in which a Magistrate of the District or a Magistrate or bench of Magistrates invested with the powers of a Magistrate of the first class, empowered to act under Sects. 222, 223, or 224, passes a sentence of imprisonment not ex-

ceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

An appeal may be brought against any sentence referred to in Sect. 273 or 274, by which any two or more of the punishments therein mentioned are combined.

Nor against any sentence which would not otherwise be liable to appeal because the person convicted is ordered to find security to keep the peace.

*Saving of sentences on European British subjects.*—The provisions of this and the last preceding section shall not apply to appeals from orders passed on European British subjects under Sect. 74 or 76.

*Explanation.*—A sentence by which imprisonment is awarded in default of payment of fine, is not a sentence by which two or more punishments are combined, within the meaning of the second clause of this section.

*Note.*—This explanation is added by Act xi. of 1874, a proviso in the second paragraph of the section as it originally stood, to the same effect approximately, being by the same Act xi. of 1874 repealed.

**Sect. 275 (416).** *Copy of sentence to accompany petition.*—Every petition of appeal shall be accompanied by a copy of the judgment or order appealed against.

**Sect. 276.** *Copy of sentence or order to be furnished.*—If any person affected by a sentence or other order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury, or of any other proceeding not being the judgment or order provided for by Sect. 464, he shall, on applying for such copy, be furnished therewith, provided that he pay for the same, unless the Court, for some special reason, sees fit to furnish it free of cost.

*Note.*—The original Sect. 276 was repealed by Act xi. of 1874, and the present substituted, but the effect of both is the same, the change made being only in the wording.

See Sect. 464. Eight annas for every 360 or fraction of 360 words is the charge for such copies.—Act. vii. of 1870, sch. 2, art. 1. Where a suit had been defended without the aid of the attorney for paupers, and special leave was given to the defendants to bring an appeal *in formâ pauperis*, they obtained a copy of the judgment in the court below without payment.—*Mancooverbai v. Pestanji*

**Drisha.** When no record is kept but the judge's notes, it would appear that under this section a copy of such notes should be furnished on due payment being made.—And see *Reg. v. Subbayya Gaundan*, 1 Mad. H.C. Reps. Crim. 138.

**Sect. 277 (418).** *Procedure when appellant in jail.*—If the party appealing be in jail, he shall be at liberty to present his petition of appeal and the copy of the judgment or order appealed against to the Magistrate or other officer in charge of the jail, who shall thereupon forward the petition to the proper appellate authority.

**Note.**—The fullest opportunity should be given to prisoners to execute vakalatnamas to whomsoever they please, and without reference to the mode in or circumstances by which they may be influenced to do so.—*In re Shek Dadabhai*, 1 Bom. H.C. Reps. C.C. 16. As to the time within which appeals must be presented see Notes to Sects. 266 and 270.

**Sect. 278 (417).** *Rejection of appeal.*—The Appellate Court shall fix a reasonable time within which the appellant or his counsel or authorized agent may appear, and it may reject the appeal if, on a perusal of the petition of appeal and the copy of the judgment or order appealed against, and after hearing the appellant or his counsel or authorized agent, if he appears, it considers that there is no sufficient ground for questioning the correctness of the decision or for interfering with the sentence or order appealed against.

Before rejecting the appeal, the Court may call for and peruse all or any part of the proceedings of the lower Court, but shall not be bound to do so.

In rejecting an appeal under this section, the Appellate Court shall not enhance the sentence.—Act xi. of 1874.

**Note.**—The last paragraph of the above section is added by Act xi. of 1874.

When a criminal appeal has been rejected without hearing the appellant's pleader, and it is afterwards proved to the satisfaction of the Appellate Court that an adequate excuse has been made for the pleader's non-appearance, it is open to the Appellate Court to rehear the appeal on its merits.—*Ruling*, Nov. 7, 1873, 7 Mad. H.C. Reps. 29.

**Sect. 279.** *Notice of appeal.*—If the Appellate Court decide to hear the appeal, it shall cause notice to be given to the appellant, and, if the appeal be to the Session or High Court, shall also give



notice to the Magistrate of the District, who shall inform, if necessary, the Public Prosecutor, Government Pleader, or other officer empowered by Government on that behalf, of the day on which such appeal will be heard; and in cases under Sect. 272 where the Appellate Court decides to hear the appeal, it shall also cause notice to be given to the respondent.

**Note.**—The proviso as to appeals under Sect. 272 is added by Act xi. of 1874.

See Sect. 62.

**Sect. 280** (419). *Appellate Court may alter or reverse finding and sentence, or enhance a sentence.*—The Appellate Court, after perusing the proceedings of the lower Court, and after hearing the appellant, his counsel or agent, if they appear, and the Public Prosecutor, Government Pleader, or other officer empowered by Government or by the Magistrate of the District in that behalf, if he appears, may alter or reverse the finding and sentence or order of such Court, and may, if it sees reason to do so, enhance any punishment that has been awarded: *or order the appellant to be retried.*

Provided that if the appeal is from the sentence of a Magistrate of any class the Appellate Court shall not inflict a greater punishment than might have been inflicted by a Magistrate of the first class.

**Note.**—The words “or order the appellant to be retried” are added by Act xi. of 1874.

Under the old Act the Appellate Court had no power to enhance a sentence. The proviso in Sect. 278 that the Appellate Court has no power in rejecting an appeal under that section of enhancing the sentence, shows that before enhancing a sentence under this section the provisions of the section must be strictly complied with.

For circumstances under which the High Court will enhance a sentence under this Act, see *Reg. v. Goojree Panday*, 11 B.L.R. App. 3; *Reg. v. Soffiruddi Palwar*, 13 B.L.R. App. 23; 32 W.R. Cr. 5.

It has been held that a complainant cannot claim as of right to be heard as a respondent in appeal under this section, the Court having discretion.—7 Mad. H.C. Rulings, 42.

The Court of Session is empowered to enhance a sentence in its character of an Appellate Court; and it would appear that a sentence passed by an assistant Sessions Judge, and sent up to

the Sessions Court for confirmation under Sect. 18, would not be liable to be enhanced, the Sessions Court in such cases having but power to confirm, modify, or annul.

**Sect. 281** (421). *Suspension of sentence pending appeal.—Release of appellant on bail.*—In any case in which an appeal is allowed, the Appellate Court may, pending the appeal, order that the sentence be suspended, and if the appellant be in confinement for an offence which is bailable, may order that he be released on bail. The period during which the sentence is suspended shall be omitted in reckoning the completion of the punishment.

**Note.**—A Sessions Judge has no authority to suspend his own sentence.—Mad. H.C. Rulings ; 4 Mad. H.C. 2. Except as provided by this section, a sentence which is to take place immediately cannot be suspended.—*In re Krishnanund Bhuttercharjee*, 3 Ben. L.R. Crim. Ap. Ju. 50. A Sessions Judge, therefore, cannot suspend a sentence while he refers the case to the High Court, no appeal having been brought.—Mad. H.C. Rulings ; 5 Mad. H.C. Reps., App. 1. As to power of the Court of Session in questions of bail, see Sect. 390.

**Sect. 282** (422). *Appellate Court may make or direct further inquiry.*—In any case in which an appeal has been allowed, the Appellate Court, if it thinks further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the appellant to be necessary, may either make such further inquiry and take such additional evidence itself, or may direct such inquiry to be made and additional evidence to be taken.

If the Appellate Court takes further evidence and passes judgment and sentence, no fresh right of appeal arises in respect of such sentence.

When the evidence has not been taken before itself, the result of the further inquiry and the additional evidence shall be certified to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the presence of the appellant may be dispensed with when the further inquiry is made or evidence taken.

The provisions of this Act relating to summoning and enforcing the attendance of witnesses and their examination shall, so far as may be, apply to witnesses examined under this section.

**Note.**—A full bench of the High Court at Calcutta ruled under Sect. 422 of the old Code, that an Appellate Court could enhance the punishment when a case has been remanded for further inquiry or for additional evidence.—Anon. Cas., 3 Ben. L.R. Crim. J. 62. The Appellate Court has this power now generally under Sect. 280.

Where a person had been found guilty by a magistrate of the offence of intentionally omitting to give information of an offence which he was bound to give, and, on appeal, the judges found that there had been *no* evidence given of the omission, it was held by Kemp, J. (Glover, J., *contra*), that the judge could not remand the case for additional inquiry under this section.—*In re* Udai Chand Mukhopadhyaya, 9 B.L.R. App. 31.

**Sect. 283 (426).** *Finding or sentence when reversible by reason of error or defect in charge or proceedings.*—No finding or sentence passed by a court of competent jurisdiction shall be reversed or altered on appeal on account of any error or defect, either in the charge or in the proceedings on or before trial, or on account of the improper admission or rejection of any evidence, or by any misdirection in any charge to a jury, unless such error or defect has occasioned a failure of justice, either by affecting the due conduct of the prosecution, or by prejudicing the prisoner in his defence. No irregularity in the proceedings up to trial is a sufficient ground for reversing any judgment, sentence, or order made or passed in a trial properly held.

*Appellate Court may reduce punishment.*—In case the accused person has been sentenced to a larger amount of punishment than could have been awarded for the offence which, in the judgment of the Appellate Court, is proved by the evidence, the Appellate Court may reduce the punishment within the limits prescribed by the Indian Penal Code or any law for the time being in force for such offence.

**Note.**—Where the prosecution is not commenced by a complaint, as directed in the Code, a conviction with such irregularity cannot stand good merely because the amount of punishment might or would have been the same if proper proceedings had been instituted.—Reg. v. Mohun Chunder Chuckerbutty, 3 Ben. L.R. Ap. Crim. J. 67. In a trial conducted with the aid of assessors, the judge's omission to state the ground of his decision is not under this section an illegality which invalidates the conviction, as the

accused is not thereby prejudiced.—*Reg. v. Kala Kasan*, 6 Bom. H.C. Rep. C.C. 55. It was held under Sect. 426 of the old Code, which section was confined in its terms to cases where error or defect in the charge or proceedings was the foundation on which the alteration of the finding or sentence could be sought, that the finding of a prisoner guilty without sufficient evidence upon one charge, and acquitting him of another against which the evidence was really directed, was not error or defect in the charge or proceedings.—*Gour Mohun Ghose v. Mohundras Nath Chatterjee*, 13 W.R. Crim. 78. Where a magistrate professes to act under one section under which he has no jurisdiction, but he has jurisdiction under some other section to do the same act, the mistake is one which does not justify interference with the magistrate's order if otherwise good, and the accused has not been prejudiced thereby.—*In re Prankisto Pal*, 14 W.R. Crim. 41. Where a magistrate convicted under certain repealed sections of a law, the High Court refused to set aside the conviction, as a similar conviction and sentence might have been passed on the accused under the I.P.C., and no substantial injury had been done him.—*Rughoonath Dass v. Chuckerdhun Kant*, 15 W.R. Crim. 49; and see *in re Nobin Chunder Dutt*, 17 W.R. Crim. 50. And so, the High Court refused to interfere under this section where persons were convicted under a wrong section of the Penal Code, but were not thereby prejudiced.—*In re Roopurraïn Dutt*, 18 W.R. Crim. 38; and again, where a trial was held with a jury instead of assessors.—*Reg. v. Nurku*, 18 W.R. Crim. 59. Where a charge was proceeded with to conviction under the old Code without the sanction required by Sect. 170 (Sect. 469 of the present Code), it was held that the error was not cured by Sect. 426, as such error was not committed either in the charge or in the proceedings at the trial, but at the commencement, and no proceedings should have taken place previous to sanction being given.—*Reg. v. Mohima Chunder*, 15 W.R. Crim. 45. But see Notes to Sects. 469 and 470.

When the power conferred by Sect. 314 is exercised, it is an irregularity on the part of the judge not to pass a separate sentence under each independent head of the charge; but it is not such an error or defect that the High Court in consequence would reverse or alter the sentence under this section.—*Reg. v. Vinayak Trimbak*, 2 Bom. H.C. Rep. 391, and *Reg. v. Murar Trikam*, 5 Bom. H.C.

Rep. C.C. 3. When an imperfect examination of the prisoner has been admitted in evidence by the Sessions Judge, but the evidence, exclusive of such examination, is sufficient to support the conviction, it may be affirmed by the High Court without remanding the case for further proof of such examination; and the admission of such examination by the Court of Session does not invalidate the trial under this section.—*Reg. v. Kalla Lakhmaji*, 2 Bom. H.C. Rep. 395. As to irregularities which do not vitiate the proceedings, see Sect. 32; and as to those which render proceedings void, see Sect. 34. By Sect. 300 the provisions of this section are made applicable to orders of revision under Cap. 22.

It is the duty of the Appellate Court, as laid down by the Privy Council (*Unide Rajaha Bommaranze Bahadur v. Pemmasany Venkatadry*, 7 Moore's I. Ap. 128, and *Ajoodhya Prasad Sing v. Umrao Sing*, 6 Ben. L.R. 509), not to interfere with the judgment of the first court until it is perfectly satisfied in its own mind that the conclusion arrived at by the first court is erroneous.—*Tayabannissa Bibi v. Kuwar Sham Kishore Rai*, 7 Ben. L.R. 627.

**Sect. 284 (427).** *Procedure in case of conviction by Court not having jurisdiction.*—When any Court has convicted a person of an offence not triable by such Court, the Appellate Court shall annul the conviction and sentence of such Court, and direct the trial of the case by a Court of competent jurisdiction.

**Note.**—See the case of *in re Heraman Singh*, 8 W.R. 30. Where, on appeal, the Sessions Judge considered that the evidence disclosed the commission of an offence over which the magistrate had no jurisdiction, but the latter had convicted and punished the appellant for a less serious offence over which he had jurisdiction, it was held that the Sessions Judge could not annul the conviction and sentence, as this was only permissible in cases where the subordinate court has convicted a person of an offence not within its jurisdiction.—*Reg. v. Jehaibur Dobey*, 4 W.R. 11; *Reg. v. Ramtuhul Singh*, 5 W.R. 12; *Reg. v. Pakkee Singh*, 6 W.R. 70. Under like circumstances, it was held, in the case of *Reg. v. Hakim Sirdar*, 2 Ben. L.R. Short notes 2, that the Sessions Judge could not order the committal of the prisoner to the sessions for the higher offence. It has been held that the magistrate of the district is not competent, on appeal from a conviction by a sub-magistrate, when he is of opinion that the offence which the evidence brings home to the

prisoner is one not triable by a magistrate, and that an illegality has been committed, to annul the conviction and direct the committal of the prisoner to the Court of Session upon the proper charge, but should refer the matter to the High Court.—*Reg. v. Chanveraya bin Chanbasaya*, 5 Bom. H.C. Reps. C.C. 65. In the case of *Reg. v. Tookaram Raghoo*, July 20, 1875, Bombay High Court, this ruling was supported.

**Sect. 285 (428).** *Finality of orders on appeal.*—Judgments, sentences, and orders passed by an appellate Court upon appeal shall be final, except in the cases provided for in Sects. 272 and 297.

**Note.**—There is no power reserved to the Queen in Council by the Charter of Bombay to review a determination of the Supreme Court when leave to appeal has been refused by such court.—*In re Alloo Paroo*, 1 Morley's Digest, 117. The Crown cannot by the words of the Charter of Bombay grant an appeal in capital cases.—*In re Eduljee Byramjee*, 1 Morley's Digest, 117. In another case, which went up to the Privy Council from Bengal for leave to appeal from a conviction, judgment, and sentence of the Sudder Nizamut Adawlut, on the ground of certain irregularities at the trial, it was held: *First*, That there exists on behalf of the Crown a prerogative right of appeal from all her Majesty's dominions, even in matters of criminal jurisdiction; *Secondly*, That by granting an appeal is meant an examination of the whole proceedings which have taken place, not simply the investigation of a question of law; *Thirdly*, That it is ordinarily inexpedient to grant leave to appeal in criminal cases.—*Joykissen Moorkerjee v. The Queen*, 9 Jur. N.S. 4.

**Sect. 286.** *Unless otherwise provided, no appeal to lie from judgment, order, or sentence of Criminal Court.*—No appeal shall lie from any judgment, sentence, or order of a Criminal Court, except in the cases provided for by this Act or by any law for the time being in force.

#### *Illustrations.*

- (a) There is no appeal against an order refusing to grant compensation, or to grant an enhanced award.
- (b) There is no appeal against an order of a competent Magistrate dismissing a complaint.
- (c) There is no appeal against an order requiring a person to furnish security to keep the peace.

- (d) There is no appeal against an order requiring a person to furnish security to be of good behaviour, when such order is passed by the Magistrate of the District.
- (e) There is no appeal against an order passed under Chapter XXXIX. ; nor against a report by a jury under that chapter.
- (f) There is no appeal against an order of maintenance.
- (g) There is no appeal against an order placing a name on the jury list.
- (h) There is no appeal against an order by a Court of Session fining a juror or an assessor for non-attendance.
- (i) There is no appeal against the order of a competent Court refusing to order a commitment.
- (j) There is no appeal against an interlocutory order, such as a claim to appear by agent.
- (k) There is no appeal from an order to pay compensation under Sect. 22 of Act i. of 1871 (*An Act to consolidate and amend the law relating to trespasses by cattle*).

## CHAPTER XXI.

## REFERENCE.

**Sect. 287.** *Sentence of death.*—If the Court of Session pass sentence of death, the proceedings shall be referred to the High Court, and the sentence shall not be executed without its confirmation by the High Court.

If the accused person is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall, in its judgment, state the reason why sentence of death was not passed.

**Note.**—By Sect. 306, if a woman sentenced to death is found to be pregnant, the court may order execution of the sentence to be postponed, and may commute the sentence.

**Sect. 288** (399). *Power of High Court to confirm sentence or annul conviction.*—In any case so referred, whether tried with assessors or by jury, the High Court may either confirm the sentence or pass any other sentence warranted by law, or may annul the conviction and order a new trial on the same or an amended charge, or may acquit the accused person.

**Note.**—As to the procedure in cases referred to the High Court for confirmation, see Sect. 301. Under the old Code, the High Court had no power to acquit the accused when the original trial was by jury. Whether the original conviction was by a jury or not, the High Court in cases referred under this section must go into the facts of the case.—*Reg. v. Jaffir Ali*, 19 W.R. Crim. 57.

**Sect. 289** (400). *Power to direct further inquiry, &c.*—If the High Court think further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused person to



be necessary, it may direct such inquiry to be made, or such additional evidence to be taken.

Unless the Court of Reference otherwise directs, the presence of the convicted person may be dispensed with when the further inquiry is made or evidence taken, and neither under this section nor under Sect. 282 is such inquiry to be made or evidence taken in the presence of jurors or assessors.

The result of the further inquiry and the additional evidence shall be certified to the High Court, and the High Court shall thereupon proceed to pass judgment of acquittal, or to confirm the sentence, or to pass such sentence as it thinks fit.

**Note.**—Under Sect. 210 of the old Code, the High Court had power, *as a court of reference*, to direct tender of pardon to one or more of the persons supposed to be connected with the offence in question. But though Sect. 348 of this Act gives this power to the High Court *as a court of revision*, there is no power given to the High Court *as a court of reference*. This fact, taken in connection with the second paragraph of this section, which is new, and has no equivalent in the old Code, appears to show an intention in the framers of this Act to limit the extent of the further inquiry to be made or additional evidence taken that the High Court, as a court of reference, may direct. And it may be noticed, as a reason for this, that in cases referred to the High Court for confirmation, the judge in the court below submits for confirmation a sentence which he considers just, while a judgment or order submitted to the High Court for revision is so submitted because the judge below is of opinion such judgment or order is too severe, or is inadequate.

**Sect. 290** (401). *Confirmation or new sentence to be signed by two Judges.*—In every case so referred to the High Court, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such High Court consists of two or more Judges, be determined and signed by at least two Judges of such Court.

**Note.**—The last clause of Sect. 271 provides for the case of two judges sitting and differing in opinion.

**Sect. 291.** *When High Court consists of one Judge.*—When a High Court of reference, revision, or appeal consists of a single Judge, such Judge shall have all the powers conferred upon two or more Judges of the High Court by this chapter.

## CHAPTER XXII.

### SUPERINTENDENCE AND REVISION.

**Sect. 292** (443). *Power of High Court to make rules.*—The High Court may make and issue general rules for keeping all books, entries, and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any calendars or statements to be prepared and submitted by such Courts ;

and may also frame forms (when not prescribed by this Act) for every proceeding in the said Courts for which it thinks that a form should be provided, and from time to time may alter any such rule or form : and, with the concurrence of the local Government, may make and issue general rules for regulating the practice and proceedings of all Criminal Courts subordinate to it, and, with the like sanction, may alter any such rule :

and a High Court not established by Royal Charter may, with the concurrence of the local Government, make and issue rules for regulating the practice and proceedings of that Court, and, with the like sanction, may alter any such rule :

Provided that such rules and forms be not inconsistent with the provisions of this Act, or of any other law in force for the time being. All rules framed by the Court, and all repeals and alterations thereof under this section, shall be published in the official Gazette.

**Sect. 293.** *Calendars of trials by Subordinate Courts.*—All Subordinate Courts shall send to the High Court such periodical statements or calendars of trials held by such Courts, as the High Court prescribes, exhibiting the offences charged, the offences of which the accused persons are convicted, and the sentences or orders passed upon them.

**Sect. 294.** *Power to call for records of Subordinate Courts.*—The High Court may call for and examine the record of any case tried by any Subordinate Court for the purpose of satisfying itself as to the legality or propriety of any sentence or order passed, and as to the regularity of the proceedings of such Court.

**Note.**—Taking this section with Sect. 296, it is to be noticed that while *sentences and orders* of subordinate courts can be altered or set aside by the High Court for illegality or *impropriety*, *judgments* can only be set aside for illegality, except where an appeal lies on the facts. On this, in the case of *Reg. v. Belilios* (20 W.R. Crim. 61, and 12 B.L.R. 249), Glover, J., after laying down what is above stated, said: “And were it not so, it would be difficult to understand the meaning of Sect. 286. That section limits the hearing of appeals; but if the word ‘propriety’ allows this court to take up every case of revision from a sessions judge and decide it on its merits, it would give an appeal which the law nowhere contemplates—viz., a second appeal on the facts from the decision of the magistrate who originally tried the case. This, it seems to me, is an unanswerable objection to the meaning which the learned counsel would place on the terms of Sect. 294. That section is, I consider, limited to ‘sentences and orders,’ as distinct from ‘judgments,’ and that the latter cannot be interfered with (except in cases where the law gives an appeal on the facts) unless it be shown that the judgment is contrary to law.”

**Sect. 295** (434). *Powers of Court of Session and Magistrate to call for record of Subordinate Courts.*—Any Court of Session or Magistrate of the District may, at all times, call for and examine the record of any Court subordinate to such Court or Magistrate, for the purpose of satisfying itself or himself as to the legality of any sentence or order passed, and as to the regularity of the proceedings of such Subordinate Court. For the purposes of this section, every Magistrate in a Sessions Division shall be deemed to be subordinate to the Sessions Judge of the Division.

**Note.**—By Sect. 434 of the old Code, power was given to the Court of Session or a Magistrate to call for and examine the record of any Court *immediately* subordinate to such Court or Magistrate; and under that section it was held that a Sessions Judge ought not to call for a report from the Magistrate of the District in any case in which it was not competent to him to call for and examine the

proceedings; for instance, in the case of a trial by a Subordinate Magistrate who was not immediately subordinate to a Session Court.—*Reg. v. Girdhar Dharamdas*, 6 Bom. H.C. Reps. C.C. 33.

In the present section the word “immediately” is omitted, with the intention, it would appear, of meeting such a case as that above cited, by determining that the Session Judge or Magistrate of the District should have power to call for and examine the record of any court subordinate to such Court or Magistrate.

In the case above cited it was also held that the power to call for the record and proceedings carries with it the power to call for a report.

**Sect. 296 (434).** *Report to High Court.*—If the Court of Session or Magistrate of the District is of opinion that the judgment or order is contrary to law, or that the punishment is too severe or is inadequate, such Court or Magistrate may report the proceedings for the orders of the High Court.

In session cases, if a Court of Session or Magistrate of the District considers that a complaint has been improperly dismissed, or that an accused person has been improperly discharged by a Subordinate Court, such Court or Magistrate may direct the accused person to be committed for trial upon the matter of such complaint, or of which the accused person has been, in the opinion of the Court or Magistrate, improperly discharged.

Provided that, if, in the opinion of such Court or Magistrate, the evidence shows some other offence has been committed by the accused person, such Court or Magistrate may direct the subordinate Court to inquire into such offence.

**Note.**—The latter part of this section, after the words “upon the matter of such complaint,” is added by Act xi. of 1874.

It is to be noticed that the Court of Sessions or magistrate is not bound to, but has a discretion in, reporting proceedings under this section.—See *Nibaran Chunder Dass v. Bhuggobutty Churn Chatterjee*, 20 W.R. Crim. 40. Query whether the court or magistrate can report proceedings to the High Court where the accused has been acquitted below. It would appear this could not be done.—*Reg. v. Venku Narsa*, 9 Bom. H.C. Reps. 170; and see *Reg. v. Hatoo Khan*, cited in the Note to Sect. 297.

If an appellate authority discovers that, in a case where there has been no appeal, the sentence or order of a subordinate court

appears to be contrary to law, the case should be referred to the High Court.—Calcutta, H.C. 875, 1865; see also the case of *Reg. v. Atmaram Waman Bhandarkar*, 3 Bombay H.C. Rep. C.C. 8. A superior court is bound to refer to the High Court any case in which an illegal order or sentence may have been passed as soon as it is brought to its notice; and the time for appeals does not apply to such references.—3 W.R.C.L. 6.

A Sessions judge should not refer to the High Court a case pending before him on appeal, as he is competent to dispose of it in respect both to the law and the facts.—*Reg. v. Sree Kissen*, 9 W.R. 5; and *Reg. v. Jughal*, 9 W.R. Crim. 5.

A magistrate is bound to comply with the requisition of a superior court, calling for his proceedings.—*Reg. v. Dalsukram Haribhai*, 2 Bombay H.C. Rep. 407.

A Sessions judge, in referring a case under this section, should state reasons of his own for the reference, and not merely send up the reasons which may have been left by his predecessor.—*Batool Nushyo v. Bhugloo*, 10 W.R. Crim. 50. In cases referred to the High Court under this section it is not sufficient for the magistrate to state circumstances occurring to him as sufficient to justify an enhanced sentence or different charge; for the High Court to interfere there must be matter on the record showing improper framing of the charge, or an inadequate sentence passed.—*Reg. Hurnath Sing*, 20 W.R. Crim. 20.

Where a Sessions judge commits an accused person for trial under this section it must be for some offence with which he was substantially charged in the complaint, or which was specified in the warrant, or framed as a formal charge by the magistrate at the preliminary hearing, otherwise a man might be committed under this section for an offence of which he had never been accused and had never heard till apprehended under the commitment of the Sessions judge.—*Reg. v. Tarack Nath Muckerji*, 19 W.R. Crim 30. And it has been held that the Sessions court or magistrate of the district, before directing the committal of the accused under this section, where he has been discharged by the subordinate court, and is at liberty, must first summon him or give him notice; that he may have an opportunity of answering the charge before the session court or magistrate of the district. The ground of this ruling is, that no person can by English law be affected in his

personal liberty without having opportunity given him to answer the charge or matter of complaint for which he is arrested and put in prison.—*In re Bundhoo*, 22 W.R. Crim. 67.

For the definition of “session case,” see Sect. 4, and the note thereto. But see *Joy Kurn Singh*, 21 W.R. 41, and 7 Mad. H.C.R. App. 27, where it has been held that in this section “session cases” mean cases triable exclusively by the Court of Session. In *R. v. Gulabdas Kuberdas*, 11 Bom. H.C.R. 98, however, Mr Justice West said that the true construction of the words in this section: “that in session cases, if a court of session or magistrate of the district considers that a complaint has been improperly dismissed, or that an accused person has been improperly discharged by a subordinate court, such court or magistrate may direct the ‘accused person to be committed for trial’ is, that a court of session may direct commitment in any case specified in schedule 4 to the Code as triable by that court, although there may also be a specification of the offence as triable by a magistrate.” And in the face of the definition of “session case” in Sect. 4 this would appear the true construction of the sentence.

The High Court, under Sect. 297, has power in certain cases to order the accused to be tried, or to be committed for trial, but the court of session or magistrate of the district has, under this section, power only to direct that the accused be committed for trial, and so cannot direct a subordinate court to take further evidence in any case except under the proviso.—*In re Prosunnoo Coomar Ghose*, 19 W.R. Crim. 56.

A sessions judge reporting a case to the High Court, Calcutta, under this section, must do so as prescribed by the circular order of the 15th July 1863.—*Raj Kisto Paul v. Nittyannund Paul*, 20 W.R. Crim. 50.

No one has a *right* to be heard before the High Court as a court of revision.—See last clause of Sect. 297.

**Sect. 297** (404, 405). *Powers of revision*.—If, in any case either called for by itself or reported for orders, or which comes to its knowledge, it appears to the High Court that there has been a material error in any judicial proceeding of any Court subordinate to it, it shall pass such judgment, sentence, or order thereon as it thinks fit.

*Power to order commitment*.—If it considers that an accused per-

son has been improperly discharged, it may order him to be tried, or to be committed for trial;

*Power to alter finding and sentence.*—If it considers that the charge has been *incorrectly* (Act xi. of 1874) framed, and that the facts of the case show that the prisoner ought to have been convicted of an offence other than that of which he was convicted, it shall pass sentence for the offence of which he ought to have been convicted:

*Proviso to power of altering finding.*—Provided that if the error in the charge appears materially to have misled and prejudiced the accused person in his defence, the High Court shall annul the conviction and remand the case to the Court below with an amended charge, and the Court below shall thereupon proceed as if it had itself amended such charge.

*Power to annul conviction.*—If the High Court considers that any person convicted by a Magistrate has committed an offence not triable by such Magistrate, it may annul the trial and order a new trial before a competent Court.

*Power to annul improper and to pass proper sentence.*—If it considers that the sentence passed on the accused person is one which cannot legally be passed for the offence of which the accused person has been convicted, or might have been legally convicted upon the facts of the case, it shall annul such sentence and pass a sentence in accordance with law. If it considers that the sentence passed is too severe, it may pass any lesser sentence warranted by law; if it considers that the sentence is inadequate, it may pass a proper sentence.

*Suspension of sentence.*—The High Court may, whenever it thinks fit, order that the sentence, in any case coming before it as a Court of Revision, be suspended; and that any person imprisoned under such sentence be released on bail, if the offence for which such person has been imprisoned be bailable.

*Powers of revision confined to High Court.*—Except as provided in Sects. 328 and 398, no Court, other than the High Court, shall alter any sentence or order of any Subordinate Court except upon appeal by the parties concerned.

*Optional with Court to hear parties.*—No person has any right to be heard before any High Court, in the exercise of its powers of revision, either personally or by agent, but the High Court may, if it thinks fit, hear such person either personally or by agent.

**Note.**—The powers of revision given to the High Court under this section depend on the meaning to be given to the words *material error*.

In the case of *Reg. v. Ram Rann* (19 W.R. Crim. 28), it was held that the meaning of the expression, “material error,” is found in Sect. 283, and is such an error or defect as has occasioned a failure of justice. In giving judgment, Phear, J., said: “Here, according to the view which the referring judge himself takes, there has been no failure of justice, inasmuch as it would appear that the charge which the prisoner originally made was in reality a false one, and therefore the prisoner has been rightly convicted.”

In the matter of *Debi Churn Biswas*, 20 W.R. Crim. 40, Markby, J., said:—

“The question which we are asked to consider is not one of law or procedure, but is a pure question of fact, depending upon conflicting evidence, which evidence has been considered by the judge, and upon which he has given his opinion adversely to the accused person. I think it would be going entirely beyond the practice of this court, under the Code of Criminal Procedure, to entertain any such question. . . . Sect. 297 speaks of cases in which we may consider that there is some material error in the proceedings. We do not think that means an error in the decision on the facts, but some error in law or procedure which affects the decision.”

In the matter of *Sonatan Dass* (21 W.R. Crim. 88), the court declined to act under this section where an objection preferred to it against the jurisdiction of the court below had not been taken in the court below, and where the petitioner failed to show he had been in any way prejudiced. In this case, Ainslie, J., said:—

“Now, I think when we come to consider what a material error is, we are bound to be guided by the other parts of the Code. Here a power of interference, which is not expressly given by the Code, is claimed for the court, and probably the court has that power; but it seems to me that it is a power that has to be exercised under the same conditions as the powers expressly created by the words of other portions of the Code, and in the sections which apply to quashing proceedings for error—namely, Sects. 70, 283, 297—it will be seen that prejudice to one of the parties is a material point to be considered; and therefore it seems to me that we should be wrong if we were to hold that, under Sect. 297, this court, in the



exercise of a power not expressly given to it by the Code, ought to do that which it would not do in the exercise of the powers which are expressly given."

In the case of *Reg. v. Belilios* (12 B.L.R. 249, and 20 W.R. Crim. 61), Glover, J., said :—

"But it is contended further that the evidence on which the judge relied was so manifestly insufficient for conviction, that the result has been a failure of justice, and that this amounts to a *material error in the judicial proceedings* of the court, such as to allow of our interfering under Sect. 297, and of annulling the judgment. But I am by no means prepared to go this length. I do not think that I should have convicted the accused Belilios on the evidence to be found on this record. His testimony was entirely uncorroborated, and was, moreover, inconsistent with his previous acts, besides being highly improbable; still, I cannot say that the court below was undoubtedly wrong in believing Kali Dass's evidence, or in allowing so little weight to that of Mr Sims and his clerk. The judge (an officer of unquestioned ability and long experience) had these witnesses before him, and so had advantages in forming an opinion which this court cannot have; and if he, after a careful and deliberate weighing of that evidence, came to a conclusion unfavourable to the accused, I do not think that this court would be justified in interfering under Sect. 297, however much it might hold a contrary opinion as to the value of the evidence."

It seems questionable whether the law as laid down in the above case of *Debi Churn Biswas* can be supported. The ruling in *Reg. v. Ram Rann* seems correct. But supposing that the expression, "material error," includes an error in the decision of the lower court on the facts, the case of *Reg. v. Belilios* shows how chary the High Court will be of exercising such power.

Where a deputy magistrate acted illegally, and improperly acquitted a prisoner, the High Court, on a reference under Sect. 296, held that they could not interfere under this section. In this case it was said: "If a prisoner had been improperly discharged, we may order him to be tried, or to be committed for trial, under the 2d clause of Sect. 297. If the Legislature had also intended us to interfere when the prisoner was acquitted, it would undoubtedly

have been so expressed in that clause.”—*Reg. v. Hatoo Khan*, 21 W.R. Crim. 21, and 12 B.L.R. App. 22.

Where a magistrate tried a case under Sects. 323 and 384 of the Indian Penal Code which ought, in fact, to have been tried by the Session Court, and under Sect. 327, the High Court refused to interfere under this section and direct a new trial, on the ground that substantial justice had been done.—*In re Tarini Prosad Banerji*, 18 W.R. Crim. 8.

It has been held that the High Court can call up a case for revision under this section and Sect. 64, without regard to the stage of the judicial proceeding; so that while the proceedings of a magistrate are in an interlocutory state pending investigation, they can be called up and revised by the High Court, even where the High Court has not the record of such proceedings before it.—*Abdool Kadir Khan v. The Magistrate of Purneah*, 20 W.R. Crim. 23, and 11 B.L.R. App. 8.

Though orders of magistrates, which are not judicial proceedings, are not open to revision by the High Court under this section, still in such cases the High Court can interfere under their powers of general superintendence given by the High Court Charter Acts.—See *in re Chunder Coomar Roy*, 22 W.R. Crim. 78.

In the case of *Khajah Noorul Hossein v. Fabre Tonnerre*, 24 W.R. Crim. 26, it was held that the High Court has power under this section to interfere at any stage of a case, provided the error committed is material, and that the court's power is not limited (as under the old Code) to cases where there has been an error on a point of law.

**Sect. 298.**—The High Court or the Court of Session may direct the Magistrate of the District, by himself or by any of the Magistrates subordinate to him,

or the Magistrate of the District may direct any subordinate Magistrate,

to make further inquiry into any complaint which has been dismissed under Sect. 147.

**Sect. 299.** *Order on revision to be certified to lower Court or District Magistrate.*—Whenever a case is revised by the High Court under this chapter, it shall certify its decision or order to the Court in which the conviction was had or by which the order was passed ;

or if the conviction or order was passed by a Magistrate other than the Magistrate of the District, to the Magistrate of the District. The Court or Magistrate to which the High Court certifies its order shall thereupon make such orders as are conformable to the decision of the High Court, and, if necessary, the record shall be amended in accordance therewith :

In cases revised by the High Court under this chapter, the High Court shall not alter or reverse the sentence or order of the Court below, except as herein provided, nor shall it reverse or set aside the verdict of a jury, unless it is of opinion that the jury was misdirected by the Judge. In that case it may set aside the verdict and direct a new trial, if it think fit to do so.

**Sect. 300.** *Provisions of Sect. 283 to apply.*—The provisions of Sect. 283 shall apply to revision orders under this chapter.

## P A R T VII.

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### CHAPTER XXIII.

#### EXECUTION.

**Sect. 301** (383). *Procedure in cases referred to High Court for confirmation.*—In cases referred by the Court of Session for the confirmation of a sentence of death by the High Court, the proper officer of the High Court shall without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order under the seal of the High Court, and attested with his official signature, to the Court of Session.

Such Court shall, if the sentence be confirmed or commuted, issue a warrant to the officer in charge of the jail in which the prisoner is confined, to cause the sentence or order to be carried into execution; or, in the case of any other orders, shall cause such orders to be carried into effect.

**Sect. 302.** *Court of Session to send copy of finding and sentence to District Magistrate.*—In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence to the Magistrate of the District in which the trial was held.

*Warrant of execution.*—If the accused person is sentenced to transportation, imprisonment, or whipping, the Court shall forthwith forward him, with a warrant for the execution of the sentence, to the officer in charge of the jail of the district in which the trial was held.

The warrant shall state the offence of which the accused person has been convicted, and the period during which he is to be trans-

ported or imprisoned, and the nature of the imprisonment or other punishment.

**Sect. 302A.** In cases tried by any Court inferior to a Court of Session, where the accused person is sentenced to imprisonment, the Court shall forthwith forward him with a similar warrant for the execution of the sentence to the officer in charge of the Jail of the District in which the trial was held :

But where the accused person is sentenced to whipping, the sentence may be executed at such place and time as the Court may direct.

**Note.**—This section is substituted by Act xi. of 1874 for the fourth paragraph of Sect. 302, which was repealed by the same Act. The exception in the present Sect. 302A as to whipping is new.

**Sect. 303.** *Form and direction of warrant of commitment.*—Every warrant for the commitment of a person to custody shall be in writing and signed and sealed by the Judge or Magistrate who issues it, and shall be directed to some jailor or other officer or person having authority to receive and keep prisoners, and shall be in the Form (C or D as the case may be) given in the second schedule to this Act or to the like effect.

**Sect. 304.** *Warrant with whom to be lodged.*—The warrant of commitment shall be lodged with the jailor, if he be in the jail; and if he be not in the jail, with his deputy.

If the jailor has no deputy, the warrant may be lodged with any officer of the jail then being in the jail.

**Note.**—As to officers in charge of prisons in the Mofussil, see Act v. of 1871, Sects. 16, 17, and 18.

**Sect. 305** (385). *Execution of sentence under Sect. 301 or 302.*—Upon the receipt of a warrant under Sect. 301 or 302, the officer in charge of the jail shall cause the sentence to be executed, and shall return the warrant, when the sentence has been fully executed, to the Court from which it issued, with an endorsement under his signature, certifying the manner in which the sentence has been executed.

**Sect. 306.** *Postponement of capital sentence on pregnant woman.*—If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence.

**Sect. 307** (61). *Levy of fine.*—Whenever an offender is sentenced

to pay a fine, the Court which sentences him may issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, whether or not the offence be punishable with fine only, and whether or not the sentence direct that, in default of payment of the fine, the offender shall suffer imprisonment. Such warrant may be executed within the jurisdiction of the Court that issued it, and it shall authorize the distress and sale of any moveable property belonging to the offender without the jurisdiction of the said Court when endorsed by the Magistrate of the District in which such property is situated.

*Section to what cases applicable.*—This section shall not apply to cases in which any special procedure is laid down by any special or local law, in force for the time being, for the recovery of any fine, but shall apply to cases in which no such procedure is laid down, and to all fines not levied when this Act comes into force, but which might have been levied under this section if it had been in force when they were imposed.

*Who may issue warrant.*—The warrant may be issued either by the Judge or Magistrate who passes the sentence, or by his successor in office.

**Note.**—The Bombay High Court held in the case of *Reg. v. Lalla Karwar*, 5 Bom. H.C. Reps. C.C. 63, that only moveable property is liable for satisfaction of a fine under this section; but it was previously held by the Calcutta High Court (4 W.R. 6 C.L.) that on the death of the offender *any* property which would be liable for payment of his debts, would be liable for payment of a fine under this section if then unpaid.

The provisions of this section do not, without direct reference, apply to fines imposed under any acts passed previously to 1868.—*Reg. v. Jungli Beldar*, 8 B.L.R. Ap. 47. But by Act i. of 1868 and the similar Bengal Act v. of 1867, Sect. 61 of the old Code and Sects. 63-70 of the Penal Code were made applicable to all Acts passed after 1868; and by Schedule V. of the Act under consideration this provision for Sect. 61 of the old Act is made applicable to the present Sect. 307.

**Sect. 308 (44).** *Payment of fine in compensation.*—Whenever a Criminal Court imposes a fine under any law in force for the time being, or confirms in appeal or revision a sentence of such fine, or a sentence of which such fine forms a part, the Court may order the

whole or any part of the fine to be paid in compensation—(1), for expenses properly incurred in the prosecution; (2), for the offence complained of, where such offence can, in the opinion of the Court, be compensated by money.

Such payment shall be made, as the Court thinks fit, to or for the benefit of the complainant, or the person injured, or both.

If the fine be awarded by a Court whose decision is subject to appeal or revision, the amount awarded shall not be paid until the period prescribed for presentation of the appeal has elapsed, or, if an appeal be presented, till after the decision of the appeal.

In any subsequent civil proceedings relating to the same matter, the Court shall take into account any sum which may have been awarded under this section.

**Note.**—When loss is occasioned to a person whose property has been stolen it is not illegal for the trying magistrate to award a portion of the fine inflicted on the accused as amends to the owner of such property, although the stolen property is recovered and restored to the owner.—*Reg. v. Yessappa bin Ningappa*, 5 Bom. H.C. Reps. C.C. 41.

Compensation cannot be awarded to any one excepting the person who has actually suffered by the offence. It cannot be given to the heirs of a person who has been killed.—*In re Roop Lall Singh*, 10 W.R. Crim. 39; Bomb. C.C. 73; *Reg. v. Moorut Lall*, 6 W.R. Crim. 93.

The award of compensation should be a part of the sentence and order made upon a conviction for an offence of the nature specified therein, and should be found upon a statement of loss, damage, or expenses, as the case may be, ascertained at the trial.—*Reg. v. Gour Churn Doss*, 11 W.R. Crim. 53.

Where two persons were charged with theft, and it appeared that the second had innocently bought stolen property from the first, and was therefore discharged, the loss sustained by him was not a loss within the meaning of this section so as to permit a portion of a fine to be handed over to him as compensation.—*Rulings of Mad. H.C.*, 16th January 1869; 4 *Mad. H.C. Rep.* 28 App.

By Sect. 286 (a) there is no right of appeal against an order refusing compensation. In the case of an appeal the Appellate Court may order the payment of a fine to be suspended.—Sect. 281.

Where the accused were convicted of the theft of some bullocks and fined, and the magistrate under this section directed that the fines, if collected, should be paid to the other witness as compensation for having to return to the complainant the bullocks which he had purchased; it was held that the order was bad—the sale to the other witness not being the “offence complained of” within the meaning of this section.—7 Mad. H.C. Rulings, 3d Dec. 1872, 13.

There must be proof of some loss to the complainant—Reg. v. Kartik Chunder Halder, 5 R.C.C. Cr. 58; and the loss or special damage to the complainant must have been directly caused by, or have been the direct result of the offence—Reg. v. Samsen Babaji, 3 Bombay H.C. Rep. C.C. 43.

**Sect. 309** (45). *Imprisonment in default of payment of fine.*—In every case punishable, under any law in force for the time being, with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, the Criminal Courts shall be guided by the provisions of Sects. 64 and 65 of the Indian Penal Code in awarding the period of imprisonment in default of payment of the fine :

*Proviso as to cases decided by a Magistrate.*—Provided that, in no case decided by a Magistrate, where imprisonment shall have been awarded as part of the substantive sentence, shall the period of imprisonment, awarded in default of payment of the fine, exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

Where a person is sentenced to fine only, the Magistrate may award such term of imprisonment in default of payment of fine as is allowed by law, provided the amount does not exceed the Magistrate’s powers under this Act.

**Note.**—This section makes the provisions of Sect. 65 of the Indian Penal Code applicable, not only to offences falling under that Code as defined in its 40th section, but to every case in which a magistrate has jurisdiction under this Act.—Reg. v. Vittoba bin Soma, 5 Bom. H.C. Reps. C.C. 61. Where the convict had undergone a sentence of imprisonment on default of payment of fine notwithstanding that the fine had been paid, it was held that the Court had no power to order the fine to be refunded, but directed



application to be made to Government.—Reg. v. Natha Mula, 5 Bom. H.C. Reps. C.C. 37.

For Sects. 64, 65 of the Penal Code, see p. 36. The following four Sects., 66 to 69, determine the description of the imprisonment, and how it may be terminated.

**Sect. 310.** *Whipping, if awarded in addition to imprisonment, when to be inflicted.*—When the punishment of whipping is awarded in addition to imprisonment, by a Court whose sentence is open to revision by a superior Court, the whipping shall not be inflicted until fifteen days from the date of such sentence, or, if an appeal be made within that time, until the sentence is confirmed by the superior Court: but the whipping shall be inflicted immediately on the expiry of the fifteen days, or, in case of an appeal, immediately on the receipt of the order of the Appellate Court confirming the sentence.

**Note.**—Where a punishment of six months' imprisonment was passed, and the prisoner also sentenced to receive a punishment of whipping, to be administered on the expiry of the six months; the High Court—more than fifteen days from date of sentence having expired—held that the sentence of whipping had become inoperative, and could not be carried out.—Hur Chundra Kulal v. Jafer Ali, 20 W.R. Crim. 72; 6 Mad. H.C.R. App. 38.

**Sect. 311.** *Mode of inflicting the punishment.*—In the case of a person of or over sixteen years of age, the punishment of whipping shall be inflicted with such instrument, in such mode, and on such part of the person as the Local Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in the way of school discipline with a light rattan.

In no case, if the cat-o'-nine-tails be the instrument employed, shall the punishment of whipping exceed one hundred and fifty lashes, or, if the rattan be employed, shall the punishment exceed thirty stripes.

The punishment shall be inflicted in the presence of a Magistrate or a Superintendent of a jail, and also, unless the Court which passed the sentence otherwise orders, in the presence of a Medical Officer.

**Note.**—The words, "or a superintendent of a jail," are added by Act xi. of 1874.

**Sect. 312.** *Punishment not to be inflicted if offender not in fit*

*state of health.*—No sentence of whipping shall be carried into execution unless a Medical Officer, if present, certifies, or, if there is not a Medical Officer present, unless it appears to the Magistrate or Superintendent present, that the offender is in a fit state of health to undergo the punishment.

*Stay of execution.*—If during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Magistrate present or Superintendent, that the offender is not in a fit state of health to undergo the remainder of the punishment, the whipping shall be finally stopped.

*Not to be executed by instalments.*—No sentence of whipping shall be executed by instalments.

**Note.**—The words, “or superintendent,” are added by Act xi. of 1874. As to the construction of this and Sect. 313, see Note to that section.

**Sect. 313.** *Procedure if punishment cannot be inflicted under the last section.*—In any case in which, under Sect. 312, a sentence of whipping is, wholly or partially, prevented from being carried into execution, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either order the discharge of such offender, or sentence him, in lieu of whipping, or in lieu of so much of the sentence of whipping as was not carried out, to imprisonment for any period, which may be in addition to any other punishment to which he may have been sentenced for the same offence:

Provided that the whole period of imprisonment to which such offender is sentenced shall not exceed that to which he is liable by law, or that which the said Court is competent to award.

**Note.**—This section, read with the preceding section, establishes that: A man, though sentenced to whipping, is not to be whipped unless in a fit state to suffer punishment. The whipping is not to be commenced if he is unfit to bear it; in such case, he is to be kept in custody till the Court can revise the sentence. But if it is commenced, it is not to be continued longer than the man can bear it; and when he has had all he can bear (in the opinion of the medical officer), the executioner is to stay his hand, and the sentence has been fully satisfied, for it cannot be executed by instalments.—Mad. H.C. Rulings, 25th July 1864.

**Sect. 314 (46).** *Sentence in cases of simultaneous conviction of*

*several offences.*—When a person is convicted at one trial of two or more offences punishable under the same or different sections of any law, for the time being in force, the Court may sentence him, for the offences of which he has been convicted, to the several penalties prescribed by such enactment or enactments, which such Court is competent to inflict; such penalties, when consisting of imprisonment or transportation, to commence the one after the expiration of the other.

It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court :

*Maximum term of imprisonment.*—Provided that in no case shall such person be sentenced to imprisonment for a longer period than fourteen years.

Provided also that, if the case be tried by a Magistrate (other than a Magistrate acting under Sect. 36), the punishment shall not in the aggregate exceed twice the amount of punishment which he is by his ordinary jurisdiction competent to inflict.

**Note.**—This section only differs from the corresponding Sect. 46 of the old Code in that, where the words, “same or different section of any law” now appear, the words, “same or different section of the Penal Code” appeared in the former Sect. 46.

See Note to Sect. 71 of the Penal Code, p. 39. Separate sentences should be passed under each independent head of the charge, and it is an irregularity not to do this; but it is not such a defect or error, in consequence of which the High Court would alter or reverse the sentence under Sect. 283.—*Reg. v. Vinayak Trimbak*, 2 Bombay H.C. Rep. 414. Followed in *Reg. v. Morar Trikam*, 5 Bom. H.C.R. C.C. 3, and Rulings of Madras High Court, 4 Mad. H.C.R. Appen. 27, and 8 W.R. Crim. 85.

The High Court at Calcutta, under the old Code, held that contemporaneous sentences for distinct offences are not legal.—*Reg. v. Dhoonda Bhooya*, 5 R.C.C. Cr. 7. But where a prisoner was convicted by a magistrate of three distinct and separate offences, and was sentenced to a month's imprisonment under Sect. 342, six months' imprisonment under Sect. 325, and to whipping under Sect. 378, of the Penal Code, it was held by a full bench (*Kemp*

and Phear, J.J., dissenting) that the sentence was legal.—*Mamruddin v. Gaur Chandra Shamadar*, 7 B.L.R. 165.

Separate sentences for separate and distinct offences cannot be added together, so as to give a right of appeal, in the event of no one of the sentences alone giving that right.—*Reg. v. Nuggurdi Paramanik*, 6 R.C.C. Cr. 2, and 10 W.R. Cr. 3. See also *Reg. v. Maly Sheikh*, 11 W.R. 43, cited in the foregoing case.

Under the old Code, it was held that where two offences are portions of one continuous criminal act, separate punishment—such as imprisonment for housebreaking with intent to commit theft, and whipping for theft committed directly after such housebreaking—though not illegal, should not be passed, as it is contrary to the spirit and intention of the Act.—*Reg. v. Genu bin Aku*, 5 Bom. H.C.R.C.C. 83.

In the case of *Reg. v. Anvarkhan Gulkhan* (9 Bom. H.C.R. 172), it was held that a sentence on each of two such charges, as for housebreaking with intent to commit theft and theft committed, might be passed, *provided* the aggregate amount of punishment awarded on the two charges did not exceed that which the case warranted for the greater of the two offences.—But now see Explanation 3 of Sect. 454, Illustrations *n* and *p*, and Note, by which the ruling in the above case is supported.

**Sect. 315.** *Trial of previously convicted persons.*—Whoever, having been convicted of an offence punishable under chapter XII. or chapter XVII. of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate considers him an habitual offender, be committed to the Court of Session :

Provided that, in districts in which the Magistrate of the District has been invested with powers under Sect. 36, the accused person may be placed on his trial before such Magistrate of the District.

**Note.**—Chapter XII. of the Penal Code treats of offences relating to coin and Government stamps, and includes Sects. 230 to 263 ; Chapter XVII. refers to offences against property, and includes Sects. 378 to 462.

**Sect. 316 (47).** *Currency of sentence on escaped convicts.*—When sentence is passed on an escaped convict for such escape or for any

other offence, the Court may direct the sentence to take effect immediately, or after such convict has suffered imprisonment or transportation, as the case may be, for a further period, equal to that which remained unexpired of his former sentence at the time of his escape.

**Note.**—The sentence, it appears, would take place immediately when it is that of death or whipping, or severer than that from which the convict has escaped.—See Sect. 110 of the High Courts Criminal Procedure Code. The explanation in this section of the High Courts Act would probably be accepted as the relative severity of different sentences.

**Sect. 317 (48).** *Sentence on offender already sentenced for another offence.*—When sentence is passed on a person already under sentence of imprisonment or transportation, and the sentence is for imprisonment or transportation, the Court shall direct that such imprisonment or transportation shall commence at the expiration of the imprisonment or transportation to which such person has been previously sentenced,

or, if he is undergoing a sentence of imprisonment, and the sentence, on such subsequent conviction, be for transportation, the Court may direct that the sentence shall commence immediately, or at the expiration of the imprisonment to which such person has been previously sentenced :

Provided that nothing in this section shall be held to excuse such person from any part of the punishment to which he is liable upon such former or subsequent conviction.

**Note.**—The Statute 9 Geo. IV. c. 74, s. 23, and Act xviii. of 1862, s. 39, confer like power on the High Courts.

Except in the cases provided by Sects. 314, 316, and 317, a magistrate cannot order a sentence passed by him to take effect from some future date.—*In re Krishnanand Bhuttacharjee*, 3 B.L.R. Grim. J.; S.C. 50 (*sub nom. in re Kishen Soonder Bhuttercharjee*, 17 W.R. Cr. 47).

**Sect. 318 (433).** *Confinement of youthful offenders in reformatories.*—When any person, under the age of sixteen years, is sentenced by any Criminal Court to imprisonment for any offence, such Court may direct that such offender, instead of being imprisoned in the criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement,

in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Government prescribes with regard to the discipline and training of persons confined therein. All persons confined under this section shall be subject to the rules so prescribed by Government.

**Sect. 319** (50, 51). *Governor General in Council to appoint places to which persons sentenced to transportation may be sent.—Local Government to direct removal of such persons to places appointed.*—The Governor General of India in Council may, from time to time, appoint a place or places within British India to which persons sentenced to transportation shall be sent : the Local Government, or some officer duly authorized by such Government, shall give orders for the removal of such persons to the place or places so appointed ; and no sentence of transportation shall specify the place to which the person sentenced is to be transported.

**Note.**—Europeans and Americans are to be sentenced to penal servitude instead of transportation.—Sect. 56 of the Penal Code, p. 33. For the law as to penal servitude, see Act v. of 1871.

**Sect. 320** (52). *Person sentenced to transportation while undergoing transportation under previous sentence need not be removed.*—When sentence of transportation is passed on a person already undergoing transportation under a sentence previously passed for another offence, it shall not be necessary for the Local Government to order his removal from the place in which he is so undergoing transportation.

**Sect. 321** (53). *Sentence of death.*—When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

**Sect. 322** (54). *Power to remit punishment.*—When any person has been sentenced to punishment for an offence, the Governor General of India in Council, or the Local Government, may, at any time, without conditions, or upon any conditions which the person sentenced accepts, remit the whole or any part of the punishment to which he has been sentenced, or grant a reprieve or respite in respect of such sentence.

If the person, to whom a pardon has been given, fails to fulfil the conditions prescribed by the Governor General of India in Council, or the Local Government, the Governor General of India

in Council or the Local Government, as the case may be, may withdraw such pardon, whereupon such person shall be remanded to undergo the unexpired portion of his sentence.

*Power to commute punishment.*—The Governor General of India in Council, or the Local Government, may also, without the consent of the person sentenced, in substitution for the sentence passed according to law, commute any one of the following sentences for any other mentioned after it—

death, transportation, penal servitude, imprisonment.

This section applies to all punishments inflicted by the High Court. Provided that nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites or remissions of punishment :

When any fine or forfeiture is imposed on any person for any offence, the Governor General in Council or the Local Government may (subject to the provisions of Sect. 308) direct that a share or proportion of such fine be paid over to the prosecutor towards defraying his expenses as the Governor General in Council or the Local Government thinks fit.

**Note.**—The words “been sentenced . . . of such sentence,” and also the last two paragraphs, are added by Act xi. of 1874.

See Sects. 54 and 55 of the Penal Code, p. 32.

## PART VIII.

### EVIDENCE.

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#### CHAPTER XXIV.

##### SPECIAL RULES OF EVIDENCE IN CRIMINAL CASES.

**Sect. 323 (368).** *Evidence of medical witness.*—The examination of a Civil Surgeon or other medical witness, taken and duly attested by a Magistrate, may be given in evidence in any criminal trial although the person examined is not called as a witness.

*Court may summon medical witness.*—The Court may summon such Civil Surgeon or other medical witness, if it sees sufficient cause for doing so.

**Note.**—The substance of a report of a subordinate medical officer with an expression of concurrence therein by the civil surgeon cannot be read in evidence under this section.—*Reg. v. Chintamozee*, 11 W.R. Crim. 2. Nor is a letter of a medical officer expressing an opinion evidence under this section, or Sect. 325.—*Reg. v. Kaminee Dossee*, 12 W.R. Crim. 25.

**Sect. 324.** *Accused may be convicted on his own plea.*—If an accused person admits the commission of an offence before a Court competent to try him for such offence, such Court may convict him on his own admission.

**Note.**—Query whether this section applies where the offence admitted to have been committed is not that for which the prisoner stands accused.—See Sect. 73 High Courts Crim. Pro. Code.



Cases may arise where the court, in justice to the accused, should not convict him on his own admission ; for instance, the accused having killed a man, may plead guilty to murder, when an examination into the facts may prove him but guilty of culpable homicide, not amounting to murder. And cases may as probably arise where the court, on public grounds, should not convict the accused on his own evidence, for in many cases examination into the facts will prove him guilty of a more serious offence than that he has pleaded guilty to.

**Sect. 325 (370).** *Report of Chemical Examiner.*—Any document purporting to be a report from the Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report, in the course of any criminal trial, or in any preliminary inquiry relating thereto, may, if it bears his signature, be used as evidence in any Criminal trial.

*Genuineness of signature may be presumed.*—The Court may presume that the signature of any such document is genuine, and that the person signing it held the office which he professed to hold at the time when he signed it.

**Note.**—The original report must be put in evidence, not a copy ; and the original should also, if necessary, be sent up with the other papers to the High Court.—*Reg. v. Biswambhas Das*, 6 Ben App. 122, and 15 W.R. Crim. 49.

**Sect. 326.** *Previous conviction or acquittal how proved.*—Where a previous conviction or acquittal is to be proved against an accused person, application shall be made to the officer in whose custody the records of such trial may be. It shall not be necessary to produce the record of the conviction or acquittal of such accused person, or a copy thereof, but an extract may be produced in proof of such conviction or acquittal if certified, under the hand of the Clerk of the Court or other officer having the custody of the records of the Court in which such conviction or acquittal was had, or by the Deputy of such Clerk or officer, to be a copy of the charge, finding, and sentence, as the case may be.

**Sect. 327.** *Record of evidence in the absence of the accused.*—If an accused person abscond, and after due pursuit cannot be arrested, any Court, competent to try or to commit such accused person for trial for the offence complained of may, in his absence, record the

statements of the persons acquainted with the facts; and such depositions may, on the arrest of such person, be put in on his trial for such offence, if it is not practicable to procure the attendance of such witnesses.

**Sect. 328.** *Convictions on evidence partly recorded by one Magistrate and partly by another.*—Whenever any Magistrate, after having heard part of the evidence in a case, ceases to exercise jurisdiction in such case and is succeeded by another Magistrate who has and who exercises jurisdiction in such case, such last-named Magistrate may decide the case on the evidence partly recorded by his predecessor and partly recorded by himself, or he may re-summon the witnesses and commence afresh:

Provided that the accused person may, when the second Magistrate commences his proceedings, demand that the witnesses shall be re-summoned and re-heard, in which case the trial shall be commenced afresh:

Provided also that any Court of Appeal or revision, before which the case may be brought,

or, in cases tried by Magistrates subordinate to the Magistrate of the District, the Magistrate of the District, without appeal,

may set aside any conviction, passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or Magistrate is of opinion that the accused person has been materially prejudiced thereby; and may order a new trial.

**Sect. 329.** *Commitments on evidence partly recorded by one officer and partly by another valid.*—Whenever, from any cause, a Magistrate making an inquiry, under chapter XV. of this Act, is unable to complete the proceedings himself, any other Magistrate having jurisdiction to inquire and to commit, may complete the case and proceed as if he had recorded all the evidence himself.

**Sect. 330.** *When a commission may issue.*—Whenever it appears that the attendance of a witness cannot be procured without an amount of delay, expense, or inconvenience which under the circumstances of the case would be unreasonable, it shall be competent to a Court of Session or to a High Court to dispense with the personal attendance of such witness.

*Mode of issuing commission.*—Such Court of Session or High Court may direct a commission to the Magistrate of the District, or to a Magistrate of the first class, in whose jurisdiction such wit-

ness may be. The Magistrate to whom the commission is directed shall proceed to the place where such witness is, or shall summon such witness before himself. Such Magistrate shall take the evidence of such witness in the same manner, and shall have for this purpose and may exercise the same powers, as in trials of warrant cases.

If the witness is within the local limits of the ordinary original criminal jurisdiction of any of the High Courts of Judicature at Fort William, Madras, and Bombay, the Court dispensing with his personal attendance may direct a commission to any Police Magistrate within such limits, and such Police Magistrate shall have the like power to compel the attendance and examination of witnesses as he possesses for that purpose in cases pending before him.

*Prosecutor and accused may examine witness.*—The prosecutor and the accused person may forward interrogatories upon which the officer to whom the commission is directed shall examine the witness, or the prosecutor may appear personally before the Magistrate or Police Magistrate to whom the commission is directed, or the prosecutor or accused person may so appear by authorized agent.

*Procedure when commission is required in Magistrate's cases.*—Whenever, in the course of a trial before a Magistrate, it shall appear that a commission ought to be issued for the examination of a witness whose evidence is necessary in such trial, such Magistrate shall apply to the Court of Session to which he is subordinate, stating the reasons for the application; and such Court may either issue a commission in the manner hereinbefore provided, or may reject the application.

After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto, and the deposition of such witness may be used as evidence in the case and shall form part of the record.

**Note.**—Paragraphs three and six are added by Act xi. of 1874; and the same Act substitutes “upon” for “to,” and “examine the witness” for “cause a return to be made,” and adds the words “or police magistrate” in paragraph four.

Sect. 33 of the Evidence Act provides that “evidence given by a witness in a judicial proceeding, or before any person authorized by

law to take it, is relevant for the purpose of proving in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense, which, under the circumstances of the case, the Court considers unreasonable. Provided that the proceeding was between the same parties or their representatives in interest; that the adverse party in the first proceeding had the right and opportunity to cross-examine; that the questions in issue were substantially the same in the first as in the second proceeding.

*Explanation.*—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section. It is to be observed that in this section of the Evidence Act the words used, “or if his presence cannot be obtained without an amount of *delay and expense*,” differ from those in the section under consideration, the words in the latter being, “Whenever it appears that the attendance of a witness cannot be procured without an amount of *delay, expense, or inconvenience*.” The word “inconvenience” has probably been introduced in view of evidence to be given by Hindoo ladies of certain castes.

This section does not expressly provide for cases where the witness is in the territories of any native prince or state in India in alliance with her Majesty, an omission which has been rectified in the High Criminal Procedure Act (see paragraph 3 of Sect. 76 of that Act, *post*). But by Sect. 6 of the Foreign Jurisdiction and Extradition Act xi. of 1872 (*post*), justices of the peace appointed by the Governor-General in Council in any country or place beyond the limits of British India have all the powers conferred on magistrates of the first class, who are justices of the peace and European British subjects by any law for the time being in force in British India relating to Criminal Procedure, therefore (the terms of this section of the Foreign Jurisdiction Act being general, and not, it would appear, limited in their application by the preamble of the Act) the Court of Session or High Court may direct a commission under Sect. 330 of the Criminal Procedure Code to any justice of the peace appointed by the Viceroy in the territories of any native prince or state in India in alliance with her Majesty.

## CHAPTER XXV.

## EVIDENCE HOW TAKEN.

**Sect. 331 (43).** *Examination of complainants and witnesses.*—In all Criminal Courts, complainants and witnesses shall be examined upon oath or affirmation, or otherwise according to the provisions of the law for the time being in force in relation to the examination of witnesses.

**Note.**—A witness cannot be put upon both oath and affirmation at the same time.—Reg. v. Hossein Sirdar, 13 W.R. Crim. 17.

Sect. 13 of the Oaths Act x. of 1873 is to the effect that “no omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding, or render inadmissible any evidence whatever in or in respect of which such omission, substitution, or irregularity took place, or shall affect the obligation of a witness to state the truth.” And it has been held by a full bench at Calcutta, Jackson, J., dissenting, that the word “omission” includes any omission, and is not confined simply to accidental or negligent omissions.—Reg. v. Sewa Bhogta, 23 W.R. Crim. 12. Chapter X. of the Evidence Act determines the rules for the examination of witnesses.

**Sect. 332.** *Manner of recording evidence.*—In inquiries and trials (other than summary trials) under this Act, the evidence of the witnesses shall be recorded by the Magistrate or Sessions Judge, as the case may be, in the following manner.

**Sect. 333.** *In summons cases and in trials by Magistrates of the first and second classes of certain offences.*—In summons cases tried before Magistrates, and in cases of the kind referred to in Sect. 222, when tried by a Magistrate of the first or second class, otherwise

than at a summary trial, the Magistrate shall make a memorandum of the substance of the evidence of each witness, as the examination of the witness proceeds.

Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

**Sect. 334 (195).** *In all other cases before Magistrates, and in all proceedings before Courts of Session.*—In all other cases before Magistrates, and in all proceedings before Courts of Session, the evidence of each witness shall be taken down in writing in the language in ordinary use in the district in which the Court is held, by or in the presence and hearing and under the personal direction and superintendence of the Magistrate or Sessions Judge, and shall be signed by the Magistrate or Sessions Judge.

*Evidence in English.*—When the evidence of a witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand; and an authenticated translation of the same, in the language in ordinary use in the district in which the Court is held, shall form part of the record.

If the accused person be a European British subject, or be familiar with the English language, no translation shall be necessary.

*Memorandum when evidence not taken down in writing.*—In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Magistrate or Sessions Judge, with his own hand, and shall form part of the record.

If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to do so.

**Note.**—Great care should be taken in recording evidence given before the Magistrate, as in some cases much depends upon it; as, for instance, where a witness gives one account before the Magis-

trate and another before the Court of Session. The dates of transactions should always be given in the depositions by the day of the month, and not as "last Monday," "last Tuesday week," &c. In one case that came under my notice prisoner was acquitted, solely from the fact that the events were alleged in the depositions to have taken place "yesterday," which was in fact the 1st of the month; but there happened to be two remands, and the caption of the depositions was not dated until the second, when yesterday appeared to be the 15th, to which date most of the witnesses agreed when it was put to them by the counsel for the prosecution, until the police constable was examined, when he at once rejected the date suggested by counsel, and gave the correct date. The result was, that certain acts which had really been done part in the night and part on the next morning, appeared to have happened part on one night and part a fortnight after; in which case what was really the strongest part of the evidence was perfectly consistent with the prisoner's innocence. Under these circumstances, the court said that such a glaring inconsistency in dates could not be rectified, and the prisoner must be acquitted.

The requirements of this section are not satisfied by the statement on the depositions that a witness "deposes as last witness;" a separate note must be made of the substance of the evidence of each witness.—Reg. v. Bigha Wullud Soorjun and others, 1 Bombay H.C. Rep. 91; Reg. v. Muttee Nushyo, Suth. Rep. 1864, 18.

The question whether a purdah lady, who claimed to be allowed to remain in her palanquin, should be permitted to do so, was raised and determined in the affirmative by the Calcutta High Court in the case of Beebee Rookhyah Banoo, 17th February 1868.—1 Ben. Reps. Short notes, 5.

If a person is before the court as a witness, his evidence must be recorded as the law directs; if he is not a witness, and is not examined as such, a judge has no right to allude to his having made any statement.—Reg. v. Phoolehund, 8 W.R. Crim. 11.

The attestation of a magistrate stating why he could not proceed with the further examination of a witness is *prima facie* proof of that fact, and may be laid before a jury.—Reg. v. Rasookollah, 12 W.R. Crim. 51.

**Sect. 335.** (196). *Local Government may direct evidence to be recorded by Sessions Judge or Magistrate himself in his vernacular.*—

The Local Government may direct that in any district or part of a district, or in proceedings before any Court of Session or before any Magistrate or class of Magistrates, the evidence of complainants or witnesses shall be taken down by the Sessions Judge or Magistrate with his own hand in the vernacular language of the Sessions Judge or Magistrate, unless the Sessions Judge or Magistrate be prevented by any sufficient reason from taking down the evidence of any complainant or witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record :

*or in English or in language in ordinary use in district.*—Provided that, if the vernacular language of the Sessions Judge or Magistrate be not English or the language in ordinary use in the district in which the Court is held, the Local Government may direct him to take down the evidence in the English language, or in the language in ordinary use in the district in which the Court is held, instead of his own vernacular,

**Sect. 336** (268). *In cases referred to in Sect. 333 Magistrate may record as provided in Sect. 334 or Sect. 335.*—In cases of the kind referred to in Sect. 333, tried before Magistrates, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in Sect. 334, or, if within the jurisdiction of such Magistrate, the Local Government has made the order referred to in Sect. 335, in the manner provided in Sect. 335.

**Sect. 337** (197). *Local Government to decide what language is to be held to be in ordinary use.*—The Local Government may determine what, for the purposes of this Act, shall be held to be the language in ordinary use in any district in which a Court is held.

**Sect. 338** (198). *Form of record of evidence.*—The evidence taken under Sect. 334 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

It shall be in the discretion of the Magistrate or Sessions Judge to take down, or cause to be taken down, any particular question and answer, if there appears any special reason for so doing, or if any person who is a prosecutor or a person accused, or his counsel or agent, requires it.

**Sect. 339** (198). *Procedure in regard to evidence when completed.*



—As the evidence of each witness, taken under Sect. 334, is completed, it shall be read over to the witness in the presence of the accused person, if in attendance, or of his agent, when his personal attendance is dispensed with and he appears by agent, and shall, if necessary, be corrected.

If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his evidence as taken down to be interpreted to him in the language in which it was given, or in a language which he understands.

**Note.**—Where the English record written by the Magistrate was put in to prove what the accused had said before the Magistrate, the accused's evidence so taken down in English having neither been read over to him when completed, nor translated to him into a language he understood, it was held not to be evidence of what the accused had said under Sect. 91 of the Evidence Act i. of 1872.—Reg. v. Mungul Dass, 23 W.R. Crim. 28.

**Sect. 340 (200).** *Interpretation of evidence to accused or his agent.*—In all cases whatever, when the evidence is given in a language not understood by the accused person, it shall be interpreted to him in open Court in a language understood by him, where he is present in person.

If he appears by agent, and the evidence is given in a language other than the language in ordinary use in the district in which the Court is held, it shall be interpreted to such agent in that language.

In cases in which documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

**Note.**—Where a document is put in for the purpose of merely giving a formal proof of that which is an incontestable fact, it is not necessary to interpret it to the accused at length. It is sufficient if he be made to understand what the document is, and for what purpose it was used.—Reg. v. Amiruddin, 15 W.R. Crim. 25.

The interpreter, without being sworn or affirmed, is bound to interpret truly. Sec. 422.

**Sect. 341.** *Remarks respecting demeanour of witness.*—Every Sessions Judge or Magistrate recording the evidence of a witness shall record such remarks as he thinks material respecting the demeanour of such witness whilst under examination.

*Of the Examination of Accused Persons.*

**Sect. 342.** *Accused may be questioned.*—In all inquiries and trials a Criminal Court may from time to time and at any stage of the proceedings,

put any questions to the accused person which such Court may think proper.

**Sect. 343.** *Accused not punishable for refusal to answer.*—The accused person shall not be liable to any punishment for refusing to answer, or for answering falsely, questions asked under Sect. 342, but the Court shall draw such inferences as seems just from such refusal.

**Sect. 344** (203). *No influence to be used to induce disclosures.*—Except as is provided in Sect. 347, no influence, by means of any promise or threat or otherwise, shall be used to the accused person to induce him to disclose or withhold any matter within his knowledge.

**Note.**—See Note to Sect. 122.

**Sect. 345** (204). *Accused not to be sworn.*—No oath or affirmation shall be administered to the accused person.

**Sect. 346** (205). *Examination of accused how recorded.*—Whenever an accused person is examined, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers.

When the whole is made conformable to what he declares is the truth, the examination shall be attested by the signature of the Magistrate or Sessions Judge, who shall certify under his own hand that it was taken in his presence and in his hearing, and contains accurately the whole of the statement made by the accused person.

In cases in which the examination of the accused person is not recorded by the Magistrate or Sessions Judge himself, he shall be

bound, as the examination proceeds, to make a memorandum thereof in the vernacular of the district, or in English, if he is sufficiently acquainted with that language; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall be annexed to the record. If the Magistrate or Sessions Judge is precluded from making a memorandum as above required, he shall record the reason of his inability to do so.

The accused person shall sign or attest by his mark such record.

If the examination be taken in the course of a preliminary inquiry, and the Court of Session find that the provisions of this section have not been fully complied with, it shall take evidence that the prisoner duly made the statement recorded: Provided that if the error does not prejudice the prisoner, it shall not be deemed to affect the admissibility of the statement so recorded.

**Note.**—This section, from the words, “In cases in which the examination of the accused,” is new.

Under Sect. 205 of the old Code, it was held that if the examination of the accused were not recorded in strict accordance with the requirements of the section, it would not be admissible in evidence on his trial before the Court of Session.—*Reg. v. Timmi*, 2 Bom. H.C. Reps. 131; *Reg. v. Kalla Lakhmaji*, *id.* 419; *Reg. v. Mussamut Niruni*, 7 W.R. Crim. 49; *Reg. v. Chupput Khywar*, 15 W.R. Crim. 83. And see *Reg. v. Goshto Lall Dutt*, 7 Ben. L.R. App. 62, and 15 W.R. Crim. 68.

The confession of an accused person, taken by a magistrate having no jurisdiction to commit or try him, is imperfect if not signed by the accused person or attested by his mark, and is inadmissible in evidence (Sect. 122).—*Reg. v. Bai Ratan*, 10 Bom. H.C.R. Ap. Cr. Ju. 166. Followed in *Reg. v. Daya Anand*, 11 Bom. H.C.R. 44, where a judgment of conviction, based on a confession, signed as follows—“Signature of A. B. (accused), the handwriting of C. D.”—was reversed.

The term “preliminary inquiry,” in the final clause of this section, refers to such inquiries as are the subject of Chapters XIV. (Of Inquiries and Trials) and XV. (Of Inquiry into Cases Triable by the Court of Session or the High Court); and therefore this clause does not apply to confessions recorded under Sect. 122, which refers to an inquiry, not during a trial, or one held with a

view to committal, but an inquiry for the purpose of forwarding confessions, when recorded, to the magistrate by whom the case of the accused person is inquired into or tried. Consequently, when a confession taken under Sect. 122 is admissible in evidence, oral evidence to prove that such a confession was made, or what the terms of that confession were, is inadmissible also (Sect. 91, Indian Evidence Act).—Reg. v. Bai Ratan, *supra*. The cases of Reg. v. Kalla Lakhmaji, Reg. v. Powadi bin Bassappa, Reg. v. Vithoji Valad Abba, and Reg. v. Ganu Bapu, *supra*, are no longer good on the question, as above decided by Reg. v. Bai Ratan.

Where an accused makes two distinct statements—the one amounting to a confession of guilt, the other repudiating guilt—if the one statement is taken against the accused, the other also must be taken for what it is worth in his favour. The court ought to weigh well the relative credibility of the two statements before it accepts the one in preference to the other.—Reg. v. Soobjan, 10 B.L.R. 332.

See Note to Sect. 122.

An accused person whose signature to a statement made by him to the committing magistrate is not taken, as provided by this section, is not thereby prejudiced within the meaning of the section; “prejudiced” meaning “unfairly affected as to his defence on the merits.”—R. v. Deva Dayal, 11 Bom. H.C.R. 237.

**Sect. 347 (209).** *Magistrate may tender pardon to accomplice.*—The Magistrate of the District, any Magistrate of the first class inquiring into the case, or with the sanction of the Magistrate of the District, any Magistrate duly empowered to commit to the Court of Session, may, after recording his reason for so doing, tender a pardon to any one or more of the persons supposed to have been directly or indirectly concerned in or privy to any offence specified in column seven of the fourth schedule hereto annexed as triable exclusively by the Court of Session, on condition of his or their making a full, true, and fair disclosure of the whole of the circumstances, within his or their knowledge, relative to the crime committed, and every other person concerned in the perpetration thereof.

Any person accepting a tender of pardon under this section shall be examined as a witness in the case, under the rules applicable to the examination of witnesses.

Such person, if not on bail, shall be detained in custody pending the termination of the trial.

A Magistrate, having tendered a pardon under this section and examined the accused person, is precluded from trying the case himself.

**Note.**—By Sect. 133 of the Evidence Act i. of 1872, an accomplice is a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

It was held before the passing of the Evidence Act i. of 1872, that a jury may convict upon the unsupported testimony of an accomplice; but a judge should never leave such evidence to them without observations which the circumstances of the case require.—Reg. v. Godai Raout, 5 W.R. 11; Reg. v. Elahee Buksh, W.R., and 1 Madras Jurist, 224. Since these cases, but before the Evidence Act came into force, it has been laid down that the English practice should be followed as to the amount of corroboration required to support the evidence of an accomplice, which is that, when he speaks as to two or more persons being concerned in the same offence, his testimony should be confirmed, not only as to the circumstances of the case, but also as to the identity of the prisoners; and that any prisoner as to whom his testimony is not confirmed should be acquitted.—Reg. v. Iman Valad Babam, 3 Bombay H.C. Rep. C.C. 57; Reg. v. Tulsi Dosad, 3 Ben. L.R. Cr. J. 66; Reg. v. Chiraj Ali, 12 W.R. Crim. 5; Reg. v. Durbaroo Dass Sirdar, 13 W.R. Crim. 8: but in the case of Reg. v. Ganu bin Dharoji, 6 Bom. H.C.R.C.C. 57, it was held that where the evidence of an accomplice is uncorroborated, though the correct practice requires the session judge to tell the jury not only that it is unusual to convict on such evidence, but also that it is unsafe and contrary both to prudence and practice to do so, yet that his omission to state this does not amount to an error in law; and see Reg. v. Mahima Chandra Dass, 6 Ben. L.R., Appen. 108, and 15 W.R. Crim. 37, where the subject is discussed. But it must be borne in mind that all these cases are now governed by the above referred to Sect. 133 of the Evidence Act.

Under the old Code it was held that the power of granting pardons is confined to cases of a heinous nature, and does not extend to petty offences; and does not, therefore, extend to cases triable

by the magistrates concurrently with the Court of Session.—Madras H.C. Rulings, 10th November 1864; confirmed in Ruling of 26th July 1866. The Bombay High Court also ruled in the same way in the case of *Reg. v. Remedios*, 3 Bombay H.C. Rep. C.C. 59. But the present Code meets this case by providing that pardons may only be given for offences triable exclusively by a court of session.

The court or magistrate must tender a pardon to the prisoner, explaining to him the conditions which accompany the tender. It is then for the prisoner to accept or refuse the tender. If he refuse, the tender will have been abortive, and the trial proceeds as if no such tender had been made; if he accept, it is the duty of the court, as pointed out in Sect. 347 to examine him as a witness in the case under the rules applicable to the examination of witnesses, and then, if after having so examined him, the court be of opinion that he has not complied with the conditions, the court may then commit, or order him to be committed, for trial upon the charge in respect of which the pardon was tendered.—*Reg. v. Gogalao*, 12 W.R. Crim. 80. The statement so made under pardon, which pardon has been withdrawn (Sect. 349), may be put in evidence against the prisoner.

**Sect. 348** (210). *High Court or Court of Session may direct tender of pardon.*—The High Court as a Court of revision, and the Court of Session after committal but before the commencement of a trial, may, with the view of obtaining on the trial the evidence of any person or persons supposed to have been directly or indirectly concerned in or privy to any such offence, instruct the committing Magistrate to tender a pardon on the same condition to such person or persons.

The Court of Session, in like manner and on the same condition, may, at any time before judgment is passed, with the view of obtaining on the trial the evidence of any person or persons supposed to have been directly or indirectly concerned in or privy to any such offence, tender a pardon to such person or persons.

**Sect. 349** (211). *When Magistrate, Court of Session, or High Court may direct commitment of person to whom pardon has been tendered.*—When a pardon has been tendered under Sect. 347 or 348, if it appears to the Magistrate before the trial, or to the Court of Session before judgment has been passed, or to the High Court as a Court of reference or revision, that any person, who has

accepted such offer of pardon, has not conformed to the conditions under which the pardon was tendered, either by wilfully concealing anything essential, or by giving false evidence, such Magistrate or Court may commit or direct the commitment of such person for trial for the offence in respect of which the pardon was so tendered.

The statement made by a person under pardon, which pardon has been withdrawn under this section, may be put in evidence against him.

**Note.**—Where a person to whom a tender of conditional pardon has been extended, is considered by the session judge not to have conformed to the conditions under which the pardon was tendered, the session judge exercising the power of committal given by this section ought not to try him along with the prisoners in whose case he has already given evidence.—*Reg. v. Litamber Dhobee*, 14 W.R. Crim. 10. The latter part of this section, from the words, “the statement made by a person under pardon,” is new ; but under the old Code, in the case of *Alibhai Mitha*, 8 Bom. H.C. Rep. C.C. 103, where the accused made a statement, on solemn affirmation, under promise and acceptance of conditional pardon, and afterwards voluntarily made a second statement retracting and contradicting the first, it was held that the first statement was admissible in evidence against him under Sect. 32 of Act ii. of 1855.

See Note to Sect. 289.

Query, whether such statement made under pardon may be put in against the person having made it when he is committed for any other offence of which he may appear to have been guilty in connection with the same matter as to which pardon was tendered.—See Sect. 78 of the High Courts Criminal Procedure Code.

## CHAPTER XXVI.

## OF SECURING THE ATTENDANCE OF WITNESSES.

**Sect. 350.** *Procedure for obtaining attendance of witnesses.*—The following procedure shall be pursued in order to obtain the attendance of witnesses before a Magistrate or Criminal Court.

**Sect. 351** (367, 263). *Power to summon material witness or examine person present.*—Any Court or Magistrate may, at any stage of any proceeding, inquiry, or trial, summon, in the manner provided by Chapter XII., any witness, or examine any person in attendance though not summoned as a witness, and it shall be its or his duty to do so if the evidence of such person appears essential to the just decision of the case.

**Note.**—It was held under the old Code that the High Court as a court of revision would not interfere or order a new trial in consequence of the refusal of the judge to summon a witness or postpone a trial.—*Reg. v. Radhu Jana*, 3 Ben. L.R. Ap. Cr. J. 59; but under Sect. 361 of the present Code the magistrate has a discretion as to summoning witnesses in summons cases; and by Sect. 362 the refusal of the magistrate in warrant cases to summon a witness named by the accused is open to appeal by the accused to the Court of Session.

The judge ought, if requested, to allow the accused an opportunity of cross-examining all witnesses whose depositions have been taken by the committing magistrate, but whose evidence is dispensed with by the prosecution at the trial, though his refusal to do so is not an error in law.—*Reg. v. Fattechand Vastachand*, 5 Bom. H.C. Bom. Rep. C.C. 85.

**Sect. 352** (188). *When warrant of arrest may issue in first instance.*—If a Court or Magistrate has reason to believe that any



witness, whose attendance is required, will not attend to give evidence without being compelled to do so, it or he may, instead of issuing a summons, issue a warrant of arrest in the first instance.

**Note.**—Under the old Code it was held that mere showing of a summons to a witness, is not a sufficient service, and that either the original should be left with him, or else shown him, and a copy left with him.—*Reg. v. Karsanlal Danatram*, 5 Bom. H.C. Reps. C.C. 20. But now Sect. 154 provides that service shall be by exhibiting one copy and delivering or tendering another.

This section only empowers a magistrate to issue a warrant for the apprehension of a witness when he has reason to believe that the witness will not attend to give evidence without being compelled to do so, and it does not empower a magistrate to commit a witness.—*In re Mahesh Chandra Bannerjee*, 4 Ben. L.R. Appen. 1; *Reg. v. Chunder Seekur Roy*, 12 W.R. Crim. 22.

A magistrate has no right to issue a summons and a warrant to a witness simultaneously.—*Reg. v. Chunder Seekur Roy*, *ubi sup.*

**Sect. 353** (189). *Procedure when warrant cannot be served.*—If such warrant cannot be executed, and the Court or Magistrate considers that the witness absconds or conceals himself for the purpose of avoiding the service thereof, it or he may issue a proclamation, requiring the attendance of such witness to give evidence at a time and place to be named therein, to be affixed on some conspicuous part of such witness' ordinary place of abode.

If the witness does not attend at the time and place named in such proclamation, the Court or Magistrate may order the attachment of any moveable property belonging to such witness to such amount as seems reasonable, not being in excess of the amount of costs of attachment, and of any fine to which the witness may be liable under the provisions of the following section.

Such order shall authorize the attachment of any moveable property within the jurisdiction of the Court or Magistrate by whom it was made; and it shall authorize the attachment of any moveable property without the jurisdiction of the said Court or Magistrate, when endorsed by the Magistrate of the District in which such property is situated.

**Note.**—Magistrates of all classes have power to act under this section (Sect. 22).

**Sect. 354** (190). *Release of attached property of witness appear-*

*ing and satisfying Court or Magistrate.*—If the witness appears and satisfies such Court or Magistrate that he did not abscond or conceal himself for the purpose of avoiding the execution of the warrant, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court or Magistrate shall direct that the property be released from attachment, and shall make such order in regard to the costs of the attachment as to such Court or Magistrate seems fit.

*Sale of property of witness not appearing, or not satisfying Court or Magistrate.*—If such witness does not appear, or, appearing, fails to satisfy the Court or Magistrate that he did not abscond or conceal himself for the purpose of avoiding the execution of the warrant, and that he had not such notice of the proclamation as aforesaid, the Court or Magistrate may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of any fine which may be imposed upon such witness under the provisions of Sect. 172 of the Indian Penal Code.

If the witness pays to such Court or Magistrate the costs and fine as aforesaid, his property shall be released from attachment.

**Note.**—Wherever a witness does not make his appearance, and his property has been attached, it is not necessary, before the magistrate sells any part of the attached property, to have the witness in court, and to record his defence.—Reg. v. Rhedoy Nanth Biswas, 2 W.R. Crim. 45. Any magistrate can sell and attach property under this section (Sect. 22).

**Sect. 355 (191).** *Arrest of person disobeying summons.*—If any person summoned to give evidence neglects or refuses to appear at the time and place appointed by the summons, and no reasonable excuse is offered for such neglect or refusal, the Court or Magistrate, upon proof of the summons having been duly served, may issue a warrant, under his hand and seal, to bring such person before him to testify as aforesaid.

**Sect. 356 (192).** *Committal of person refusing to answer.*—If any person summoned or brought before a Magistrate refuses to answer such questions as are put to him, without offering any reasonable excuse for such refusal, such Magistrate may, by warrant under his hand and seal, commit him to custody for any term not exceeding seven days, unless in the mean time such person consents to be

examined and to answer; after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of Sects. 435 and 436.

**Note.**—See Notes to Sects. 435 and 436.

A valid excuse for a person so summoned would be that he was an officer of Government, and the matter one of State; that his discovering the question would involve a breach of his duty towards his client as a barrister or an attorney; but not that the answer would tend to criminate him.—See Sects. 121 to 132 of the Evidence Act i. of 1872.

The punishment for refusing to answer may extend to six months' simple imprisonment, and with fine, which may extend to 1000 rupees, or with both.

Sect. 364 gives similar power to the Court of Session.

### *Inquiries.*

**Sect. 357 (207).** *In inquiries preliminary to commitment.*—In inquiries preliminary to commitment to a Court of Session or High Court, the Magistrate shall procure the attendance of the witnesses for the prosecution as in cases usually tried upon warrant; and it shall be in his discretion to summon any witness offered on behalf of the accused person to answer or disprove the evidence against him. If the Magistrate refuses to summon a witness so offered he shall record his reasons for such refusal.

*Power to summon supplementary witnesses.*—The Magistrate may summon and examine supplementary witnesses after commitment and before the commencement of the trial, and bind them over to appear and give evidence. Such examination shall, if possible, be taken in the presence of the accused person, and, in every case, a copy of the examination of such witnesses shall be given him free of cost.

**Note.**—By Sect. 200, when the accused has given in his list of witnesses to be summoned to give evidence on his trial before the Court of Session or High Court, the magistrate may, if he thinks proper, summon the persons therein named to attend and give evidence at the inquiry.

**Sect. 358.** *When accused person is to be committed.*—In such inquiries, when the person accused is to be committed for trial and has given in the list of witnesses mentioned in Sect. 200, the Magis-



same Court from day to day, or as I may be otherwise directed by the presiding officer; and in case of my making default herein I bind myself to forfeit to Her Majesty the sum of                    rupees.  
(Signature).

*Summons Cases.*

**Sect. 361 (262).** *In summons cases.*—In summons cases, the Magistrate may summon any person who appears to him likely to give material evidence on behalf of the complainant or the accused. Ordinarily it shall be the duty of the complainant and accused, in non-cognizable cases, to produce their own witnesses. In such cases it shall be in the discretion of the Magistrate to summon any witnesses named by the complainant or the accused; and he may require, in such cases, a deposit of the expenses of a witness before summoning him.

*Warrant Cases.*

**Sect. 362 (186).** *In cases tried upon warrant.*—In warrant cases, the Magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with the facts and circumstances of the case, and who are likely to give evidence for the prosecution, and shall summon such of them to give evidence before him as he thinks necessary. The Magistrate shall also, subject to the provisions of Sect. 359, summon any witness and examine any evidence that may be offered in behalf of the accused person to answer or disprove the evidence against him, and may for that purpose, at his discretion, adjourn the trial from time to time. If the Magistrate refuse to summon a witness named by the accused person, he shall record his reasons for such refusal, and the accused person shall be entitled to appeal to the Court of Session against such refusal.

**Note.**—Magistrates are at liberty to issue summonses for service upon witnesses beyond the limits of their own district.—Mad. H.C. Rulings, 18th August 1866.

A magistrate has no power under this Act to take recognizances from parties to appear before himself, and must enforce the attendance of a witness at a trial before himself, either by summons or in case of need by warrant.—Mad. H.C. Rulings, 18th March 1868; 3 Mad. Jur. 244; and 4 Mad. H.C. Rep. Appen. 6. See also Mad. H.C. 31st October 1868; 4 Mad. H.C. Rep. Appen. 17.

*Sessions Trials.*

**Sect. 363** (375). *Right of accused as to examination and summoning of witness.*—The accused person shall be allowed to examine any witness not previously named by him, if such witness be in attendance; but he shall not, except as provided in Sect. 448, be entitled of right to have any witness summoned other than the witnesses named in the list delivered to the Magistrate by whom he was committed or held to bail for trial.

**Note.**—When a prisoner makes a distinct defence, and calls witnesses to prove it, instead of dismissing the witnesses at once on their saying they know nothing in the prisoner's favour, the magistrate should put a few questions to them in detail to see if there is any truth in the prisoner's statement, or any part of it.—Reg v. Bhugner Putwa, 11 W.R. Crim. 9.

**Sect. 364** (365). *Procedure in case of witness refusing to answer.*—If a witness before a Court of Session refuses to answer any question which is put to him, and does not offer any just excuse for such refusal, the Court may commit him to custody for such reasonable time as it deems proper, unless in the mean time he consents to be examined and to answer.

In the event of such witness persisting in his refusal, he may be dealt with according to the provisions of Sects. 435, 436.

*Of Securing Documentary Evidence.*

**Sect. 365.** *Procedure for obtaining production of document required as evidence.*—Whenever an officer in charge of a Police-station or any Court considers that the production of any document is necessary or desirable for the purposes of any investigation or judicial proceeding, such officer or Court may issue a summons to the party in whose keeping such document is believed to be, requiring him to attend and produce such document at the time and place stated in the summons.

**Note.**—Query meaning of the words “in whose keeping.” In the High Courts Criminal Procedure Code, Sect. 86, the words “in whose keeping” are not used, but “in whose possession or power.”

**Sect. 366.** *When warrant for search for documents may issue.*—If there appears reason to believe that the person to whom the summons is addressed will not produce it as directed in the sum-

mons, such officer or Court may issue a search-warrant for the document in the first instance.

**Sect. 367.** *Power to impound document produced.*—Any Court may, if it thinks fit, impound any document produced before it, or may, at the conclusion of the proceedings, order such document to be returned to the person who produced it.

**Note.**—Refusal to produce a document by a person legally bound to do so is contempt of Court. Sect. 175, Indian Penal Code, p. 144.

## CHAPTER XXVII.

## OF SEARCH-WARRANTS.

**Sect. 368.** *Search-warrant when grantable.*—When a Magistrate considers that the production of anything is essential to the conduct of an inquiry into an offence known or suspected to have been committed, or to the discovery of the offender,

Or when he considers that such inquiry or discovery will be furthered by the search or inspection of any house or place,

He may grant his search-warrant; and the officer charged with the execution of such warrant may search or inspect any house or place within the jurisdiction of the Magistrate of the District.

The Magistrate issuing such warrant may, if he see fit, specify in his warrant the house or place, or part thereof, to which only the search or inspection shall extend; and the officer charged with the execution of such warrant shall then search or inspect only the house, place, or part so specified.

**Note.**—It is essential to the legality of a search-warrant that it should be for the production of some specified and particular thing, of which the magistrate alone is to determine the production to be necessary.—Reg. v. Syed Hossein Ali Chowdhry, 8 W.R. Crim. 74.

**Sect. 369.** *Procedure as to letter in custody of Postal Department.*—The last preceding section shall not authorize any Magistrate, other than the Magistrate of the District, to grant a search-warrant for a letter in the custody of the Postal Department;

but if any such letter is wanted for the purpose of any criminal proceeding, any Magistrate or District Superintendent of Police may give notice to the Postal authorities to cause search to be made for and to detain any such letter, pending the orders of the Magistrate



of the District ; and the Magistrate of the District may, if he thinks fit, direct the Postal authorities to deliver up any such letter.

**Note.**—If any magistrate unempowered issue a search-warrant under this section, his proceedings are void.—Sect. 34.

**Sect. 370 (115).** *Direction of search-warrant.*—A search-warrant shall ordinarily be directed to a Police officer ; but the Magistrate issuing the warrant may, after recording his reasons, if immediate search is necessary and no Police officer be immediately available, direct it to any other person.

**Note.**—Under Sect. 115 of the old Code, it was held that a warrant is to be directed to a person other than a police officer only when the latter is not forthcoming.—Reg. v. Syed Hossein Ali Chowdhry, 8 W.R. Crim. 74. This was overruled by Act viii. of 1869, which amended Sect. 115 ; but the present section is a re-enactment of Sect. 115 as it originally stood in the old unamended Code.

**Sect. 371 (116).** *Warrant to Police officer may be executed by his subordinate.*—A search-warrant directed or endorsed to a Police officer may, if he is not able to proceed in person, be executed by any other Police officer.

**Endorsement.**—In such case the name of such Police officer shall be endorsed upon the warrant by the officer to whom it is directed or endorsed.

**Sect. 372 (117).** *Execution of search-warrant out of district in which issued.*—When it is necessary for a search-warrant to be executed out of the district in which it was issued, any Magistrate, within whose local jurisdiction the warrant is to be executed, shall endorse his name thereon.

Such endorsement shall be sufficient authority for the Police officer charged with the execution of the warrant to execute the same within the said jurisdiction.

Or the search-warrant may be directed to the Magistrate within whose local jurisdiction the search is to be made ; and he shall thereupon endorse his name on such warrant, and enforce its execution in the same manner as if it had been issued by himself.

**Sect. 373 (118).** *Search-warrants may in emergency be executed without endorsement.*—Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate in whose District the warrant is to be executed will prevent the

discovery of the thing for which search is to be made, the Police officer charged with the execution of the warrant may execute the same in any place beyond the district in which it was issued without the endorsement of the Magistrate in whose local jurisdiction that place is situate.

*Thing found to be taken to Magistrate within whose jurisdiction it is found.*—If the thing for which search is made is found in such place, it shall, when the place where the thing is found is nearer to the Magistrate having jurisdiction in such place than to the Magistrate who issued the warrant, be immediately taken before the Magistrate in whose local jurisdiction it is found ;

*Order thereon.*—And unless there be good cause to the contrary, such Magistrate shall make an order authorizing it to be taken to the Magistrate who issued the warrant.

If the thing be not found after such search, the Police officer making the same shall, in addition to the return made to the Magistrate who issued the warrant, report the fact to the Magistrate in whose local jurisdiction the search was made.

**Note.**—A police officer acting under this section is protected by Sects. 76 and 79 of the Penal Code.

**Sect. 374** (119). *Procedure in such cases within Presidency town.*—If the thing searched for be found within a Presidency town, it shall be taken to the Commissioner of Police or to a Police Magistrate ; and such Commissioner or Magistrate shall act in the manner prescribed in Sect. 373.

**Sect. 375** (120). *Magistrate may issue search-warrant to be executed in jurisdiction of another Magistrate.*—Whenever it appears necessary, a Magistrate may, by his warrant, order search to be made in a place out of his jurisdiction, and may direct that the warrant be executed either after or without obtaining the endorsement of the Magistrate within whose jurisdiction the search is to be made.

When a Magistrate issues a warrant under this section, he shall inform the Magistrate within whose local jurisdiction the house or place to be searched is situate, or if the house or place be situate within a Presidency town he shall inform the Commissioner of Police of the issue of such warrant.

**Sect. 376** (121). *Magistrate may send search-warrant by post to Magistrate of another District or division of District.*—A Magistrate

issuing a search-warrant to be executed in any house or place out of the jurisdiction of the Magistrate of the District, or out of his own division, may direct the warrant to any Magistrate within whose local jurisdiction such house or place is situate, and may send the same by post.

On receipt of such warrant by the Magistrate to whom it is directed, he shall endorse his name thereon and enforce its execution in the same manner as if it had been originally issued by himself.

*Direction of warrant to be executed in Presidency town.*—If the warrant is to be executed within a Presidency town, it shall be addressed to the Commissioner of Police or to a Police Magistrate.

In such case any property found on search made may be dealt with as provided in Sects. 373 and 374.

**Sect. 377 (127).** *Search of house suspected to contain stolen property or forged documents.*—If the Magistrate of the District, or a Magistrate of a division of a District, or a Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any house or place is used as a place for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, or counterfeit Government stamps, or counterfeit coin, or instruments or materials for counterfeiting coin or for forging,

or that any forged documents, or counterfeit stamps, or false seals, or counterfeit coin, or instruments or materials used for counterfeiting coin, or for forging, are kept or deposited in any house or place,

he may by his warrant authorize any Police officer above the rank of a constable to enter, with such assistance as may be required, and by force, if necessary, any such house or place, and to search all such parts of the same as are specified in the warrant, and to seize and take possession of any property, documents, stamps, seals, or coins, therein found, which he reasonably suspects to be stolen, forged, false, or counterfeit, and also of any such instruments and materials as aforesaid.

**Note.**—If a magistrate not empowered issue a warrant under this section, his proceedings are not void.—Sect. 32.

**Sect. 378 (128).** *Magistrate may attend personally.*—The Ma-

gistrate, by whom a search-warrant is issued, may attend personally for the purpose of seeing that the warrant is duly executed.

*Magistrate may direct search in his presence.*—The Magistrate may also direct a search to be made in his presence of any house or place for the search of which he is competent to issue a search-warrant.

**Sect. 379 (142).** *Search by officer in charge of Police-station.*—Whenever an officer in charge of a Police-station, or a Police officer making an investigation, considers that the production of anything is necessary to the conduct of an investigation into any offence which he is authorized to investigate, he may search or cause search to be made for the same, in any house or place within the limits of the station of which he is in charge or to which he is attached.

In such case, the officer in charge of the Police-station or Police officer making investigation, shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, the officer in charge of the Police-station, or Police officer making investigation, may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the property for which search is to be made, and the house or place to be searched, and such subordinate officer may thereupon search for such property in such house or place.

The provisions of Sects. 382 to 385 (both inclusive), relating to search-warrants, shall be applicable to a search made under this section.

**Note.**—The words “by or under the direction of an officer in charge of a police-station, or by a police officer making an investigation,” which originally concluded this section, have been omitted, being repealed by Act xi. of 1874.

**Sect. 380 (143).** *When officer of Police-station may require another to issue search-warrant.*—An officer in charge of a Police-station may require an officer in charge of another Police-station, whether subordinate to the same Magistrate as himself or to a Magistrate of another District, to cause a search to be made in any house or place in any case in which the former officer might cause such search to be made within the limits of his own station.

Such officer, on being so required, shall proceed according to the provisions of Sect. 379, and shall forward the thing found, if any, to the officer at whose request the search was made.

**Sect. 381 (129).** *Inspection of weights and measures.*—An officer in charge of a Police-station may, without a warrant, enter any shop or premises within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing used or kept therein, whenever he has reason to believe that there are in such shop or premises any weights, measures, or instruments for weighing which are false.

If such officer finds in such shop or premises any weights, measures, or instruments that are false, he may seize the same, and shall forthwith give information of such seizure to the Magistrate having jurisdiction.

**Sect. 382 (122).** *Persons in charge of closed house to allow search.*—Whenever any house or place liable to search or inspection, under this chapter, is closed, any person residing in or being in charge of such house or place shall, on demand of the officer or other person executing the warrant, allow such officer or other person free ingress thereto, and afford all reasonable facilities for a search therein.

**Sect. 383 (123).** *Place to be searched may be broken open.*—A Police officer, or other person authorized by a warrant to search any house or place, may break open any outer or inner door or window of such house or place, in order to execute the warrant, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

**Sect. 384 (124).** *Breaking of zenâna.*—If the place ordered to be searched is an apartment in the actual occupancy of a woman, who, according to the customs of the country, does not appear in public, the officer or other person charged with the execution of the warrant shall give notice to such woman in such apartment, not being a woman against whom a warrant of arrest has been issued, that she is at liberty to withdraw.

After giving such notice and allowing a reasonable time for such woman to withdraw, and affording her every reasonable facility for withdrawing, such officer or person may enter such apartment for the purpose of completing the search, using at the same time every

precaution consistent with these provisions for preventing the clandestine removal of property.

**Sect. 385** (125). *Search to be made in presence of witnesses.*—Before conducting a search under this chapter, the officer conducting it shall call upon two or more respectable inhabitants of the place in which the house or place to be searched is situate, to attend and witness the search.

The search shall be made in their presence, but they shall not be required to attend the Court of the Magistrate as witnesses, unless specially summoned by him.

*Occupant of place searched may attend.*—The occupant of the house or place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search.

**Sect. 386** (126). *Mode of searching women.*—Whenever it is necessary to cause a woman to be searched, the search shall be conducted with strict regard to the habits and customs of the country.

**Sect. 387.** *Search of arrested persons.*—Whenever a person is arrested by the Police under a warrant which does not provide for the taking of bail,

or under a warrant which provides for the taking of bail, but the arrested person cannot furnish bail,

or is arrested without warrant and is not admitted to bail,

it shall be the duty of the arresting officer to search such person, and to place in safe custody all articles, other than necessary articles of apparel, found on such person.

A list of such articles shall be forwarded with the daily diary or with the final report in the case.

## PART IX.

### PROCEDURE INCIDENTAL TO INQUIRY AND TRIAL.

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#### CHAPTER XXVIII.

##### BAIL.

**Sect. 388** (213). *When bail shall be taken.*—When any person appears or is brought before a Magistrate accused of any bailable offence, he shall be admitted to bail.

**Note.**—Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise, are exempt from stamps for court fees.—Act vii. of 1870, sect. 19, clause 15.

**Sect. 389** (214). *Bail not to be taken for certain offences.*—When any person, accused of any non-bailable offence, appears or is brought before a Magistrate, such person shall not be admitted to bail, if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

*When bail may be taken.*—If the evidence given in support of the accusation, is, in the opinion of the Magistrate, not such as to raise a strong presumption of the guilt of the accused person,

or if such evidence is adduced on behalf of the accused person as, in the opinion of the Magistrate, weakens the presumption of his guilt, but there appears to the Magistrate in either of such cases to be sufficient ground for further inquiry into his guilt,

the accused person shall be admitted to bail pending such inquiry.

**Note.**—Bail can be taken only pending an inquiry, and not, on

the chance of evidence turning up, when a case is concluded and the accused discharged.—*Ramlal Zewari v. Supharam*, 1 Ben. L.R., Short Notes, 26, 10 W.R. Crim. 34.

**Sect. 390 (436).** *Power to direct admission to bail.*—The Court of Session may in any case, whether there be an appeal on conviction or not, direct that an accused person shall be admitted to bail, or that the bail required by a Magistrate be reduced.

**Note.**—The terms of this section are much broader than those of the corresponding Sect. 436 of the old Code, which was to the effect that “the Court of Session may direct that any accused person shall be admitted to bail, or that the bail required by a magistrate be reduced.” Under this section of the old Code it was held that a person sentenced to one month’s imprisonment by a magistrate, from which there is no appeal, was not an accused person within the section when his case was referred to the High Court under Sect. 296 so as to be admitted to bail by the Court of Session.—*Reg. v. Mahenda Nayaren*, 1 Ben. L.R.A. Cr. J. 7. But under the present section bail could be granted in such a case.

Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise, are exempt from stamps for court fees.—Act vii. of 1870, sect. 19, clause 15.

**Sect. 391 (214).** *Recognizance of accused and sureties.*—When a Magistrate admits to bail any person accused or suspected of any offence, a recognizance in such sum of money as the Magistrate thinks sufficient, shall be entered into by the person so accused and one or more sureties, conditioned that such person shall attend at the time and place mentioned in the recognizance, and shall continue to attend until otherwise directed by the Court, and, if required, shall appear when called upon at the Court of Session or other Court, as the case may be, to answer the charge.

Where a defendant was bound over to appear on one particular day only, and not on any subsequent day until the case was closed, and did appear on that day, but the case was not called on, and at the end of the day went away, and did not return the next day when the case was called on for hearing, it was held that he had fulfilled the condition of his recognizances, and that the forfeiture thereof for his non-appearance the second day was illegal.—*Mad. H.C. Rulings*, 9th April 1869; *Mad. H.C. Reps. Appen.* 44.



**Sect. 392** (215). *Insufficient bail.*—If through mistake or fraud insufficient bail has been taken, or if the sureties become afterwards insufficient, the accused person may be ordered by the Magistrate to give sufficient bail, or to find sufficient sureties, and, in default, may be committed to prison.

**Sect. 393** (216). *Bail may be taken at any time before conviction.*—If the accused person cannot find sureties when called upon, he shall be admitted to bail upon finding the same at any time afterwards before conviction.

**Sect. 394** (217). *Discharge on bail.*—After the recognizances have been duly entered into, the Magistrate, in case the accused person has appeared voluntarily, or is in the custody of some officer, shall thereupon release him; and in case he is in some prison or other place of confinement, shall issue a warrant of release to the jailer or other person having him in his custody, and such jailer or other person shall thereupon release him.

**Sect. 395** (218). *Discharge of sureties.*—Any one or more of the sureties for an accused person may, at any time, apply to the Magistrate to be discharged from their engagements.

On such an application being made, the Magistrate shall issue his warrant of arrest, directing that such person be brought before him.

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the recognizances of the sureties to be discharged, and shall call upon such person to find other sureties, and, in default, may order him to be committed to prison.

**Sect. 396** (219). *Procedure to compel payment of penalty by accused.*—Whenever, by reason of default of appearance of the person executing the personal recognizance, the Magistrate is of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance, he shall proceed to enforce the penalty by issuing a warrant for the attachment and sale of the moveable property belonging to such person, which may be found within the jurisdiction of the Magistrate of the District. Such warrant may be executed within the jurisdiction of the Magistrate of the District, and it shall authorize the distress and sale of any moveable property belonging to the accused person without the jurisdiction of the said Magistrate, when endorsed by the Magistrate of the District in which such moveable property is situated.

**Note.**—This section does not require a magistrate to call upon a defaulting defendant to show cause before enforcing the penalty, but it does require that he should form a reasonable opinion that there has been a wilful default before issuing process to enforce the penalty.—*Mad. H.C. Rulings*, 9th April 1869; *Mad. H.C. Reps. Appen. 44*. But it has been held where a magistrate estreats recognizances an opportunity should be allowed to the persons entering into them of explaining their absence, if possible.—*Reg. v Dassoo Manjee*, 11 W.R. Crim. 39.

A person who has forfeited his bail-bond may still be proceeded against under Sect. 174 of the I.P.C., although the surety shall have paid the penalty mentioned in his recognizances.—*Reg. v. Zajnuddy Lahory*, 10 W.R. Crim. 4.

**Sect. 397 (220).** *Procedure to compel payment of penalty by sureties.*—Whenever, by reason of default of appearance by the person bailed, the Magistrate is of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance of the surety or sureties, he shall give notice to the surety or sureties to pay the same, or to show cause why it should not be paid.

If such penalty be not paid and if no sufficient cause for its non-payment be shown, the Magistrate shall proceed to recover the penalty from such surety or sureties by issuing a warrant for the attachment and sale of any moveable property belonging to him or them which may be found within the jurisdiction of the Magistrate of the District. Such warrant may be executed within the jurisdiction of the Magistrate of the District, and it shall authorize the distress and sale of any moveable property belonging to the surety or sureties without the jurisdiction of the said Magistrate, when endorsed by the Magistrate of the District in which such moveable property is situated.

If such penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the Magistrate, in the Civil jail, during a period not exceeding six months.

**Note.**—Where a surety conditioned that he would be responsible for the continued presence of an accused person at one court, it was held that the surety was released from liability under his recognizances by the permission which the court gave the accused, without the surety's consent, to leave the place on business, and

also by the subsequent transfer of the case to another court.—*Reg. v. Mewa Lall*, 13 W.R. Crim. 53.

Under this section the magistrate has not the power, which is given to the court under the High Courts Criminal Procedure Code, Sect. 138, of enforcing payment of the penalty in part only, having remitted a portion.

**Sect. 398** (221). *In what cases the powers given by Sects. 396 and 397 may be exercised.*—The powers given by Sects. 396 and 397 may be exercised by every Criminal Court in every case in which a personal recognizance or bail has been given for the appearance of a party or witness, if default is made by the non-appearance of such party or witness before such Court according to the conditions of such recognizance or bail :

*Remission of part of penalty.*—Provided that the Magistrate or Court may, at his or its discretion, remit any portion of the penalty mentioned in the recognizance of the *party or witness*, or of the surety or sureties, and enforce payment in part only.

*Revision of orders.*—All orders passed by any Magistrate other than the Magistrate of the District, under this section or Sects. 396 and 397, shall be appealable to the Magistrate of the District, or, if not so appealed, may be revised by him.

*High Court or Court of Session may direct Magistrate to levy sum forfeited.*—A High Court or a Court of Session may direct any Magistrate to levy the amount due on a forfeited bail-bond executed in respect of attendance before such High Court or Court of Session.

**Note.**—A magistrate cannot mitigate the penalty of a recognizance bond.—*Anon.* 1 Bom. H.C. Reps. 138. This section shows that the provisions of Sects. 396 and 397 extend to recognizances taken by police officers.—*In re Kristo Prosad Mundle*, 22 W.R. Crim. 74.

If a magistrate unempowered revise a bail-order, his proceedings are void.—Sect. 34.

The words “party or witness” in the second paragraph, are added by Act xi. of 1874.

**Sect. 399** (437). *Deposit may be made instead of bail.*—When any person is required by any officer or Criminal Court to give bail, except in cases coming under Chapter XXXVIII., such officer or Court may permit such person to deposit a sum of money or Government promissory notes to such amount as it may fix in lieu of such bail.

## CHAPTER XXIX.

FORMATION OF LISTS OF JURORS AND ASSESSORS AND THEIR  
ATTENDANCE.

**Sect. 400** (329). *List of jurors and assessors.*—The Sessions Judge and the Collector of the District, or such other officer as the Local Government from time to time appoints in this behalf, shall prepare and make out, in alphabetical order, a list of persons residing within ten miles from the place where trials before the Court of Session are held, or within such other distance as the Local Government thinks fit to direct, who are, in the judgment of the Sessions Judge and Collector, or other officer as aforesaid, qualified, from their education and character, to serve as jurors or as assessors, respectively.

The list shall contain the name, place of abode, and quality or business of every such person ; and if the person is a European or an American, the list shall mention the race to which he belongs.

**Sect. 401** (330). *Publication of list.*—Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the Court-houses of the Magistrate of the District and of the Chief Civil Court, and in some conspicuous place in the town or towns near or in the vicinity of which the persons named in the list reside.

To every such copy shall be subjoined a notice, stating that objections to the list will be heard and determined by the Sessions Judge and Collector, or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice.

**Sect. 402** (331). *Revision of list.*—For the hearing of such objections the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the

notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may avail himself of the exemption from service given by Sect. 406, and insert the name of any person omitted from the list whom they deem qualified for such service.

In the event of a difference of opinion between the Collector or other officer as aforesaid and the Sessions Judge, the name of the proposed juror or assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector, or other officer as aforesaid, and sent to the Court of Session.

Any order of the Sessions Judge and Collector, or other officer as aforesaid, in preparing and revising the list, shall be final.

**Sect. 403 (332).** *Annual revision of list.*—The list so prepared and revised shall be again revised once in every year.

The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

**Sect. 404 (333).** *Jurors and assessors.*—All male persons between the ages of twenty-one and sixty, resident within the local limits of the jurisdiction of the Court of Session, except those hereinafter mentioned, shall be deemed capable of serving as jurors and assessors, and shall be liable to be summoned accordingly.

**Sect. 405 (334).** *Disqualifications.*—The following persons are incapable of serving as jurors or as assessors, namely:—Persons who hold any office in or under the said Court. Persons executing any duties of Police or entrusted with any Police functions. Persons who have been convicted of any offence against the State, or of any fraudulent or other offence which, in the judgment of the Sessions Judge and Collector, renders them unfit to serve on the jury. Persons afflicted with any infirmity of body or mind, sufficient to incapacitate them from serving. Persons who, by habit or religious vows, have relinquished all care of worldly affairs.

**Sect. 406 (335).** *Exemptions.*—The following persons are exempt from the liability to serve as jurors or as assessors, namely:—All officers in civil employ superior in rank to a Magistrate of the district. Judges and other judicial officers. Commissioners and Collectors of Revenue or Customs. All persons engaged in the

Preventive Service in the Customs Department. All persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty. Chaplains and others employed in religious offices. All persons in the Military service, except when, by any law in force for the time being, such persons are specially made liable to serve. Surgeons and others who openly and constantly practise in the profession of physic. Persons employed in the Post Office and Electric Telegraph Departments. Persons actually officiating as priests in their respective religions. All persons exempted by the local Government; and persons exempted by Government from personal appearance in Court under the provisions of the Code of Civil Procedure, Sect. 22.

*Person exempted is not bound to avail himself of his right of exemption.*—The exemption from service given by this section is a right of which each person exempted may avail himself or not.

Nothing contained in this section shall be construed to disqualify any such person, if he is willing to serve as a juror or as an assessor.

The Sessions Judge may issue a summons to any exempted person to serve as an assessor or juror on the trial of a European British subject.

**Note.**—Sect. 22 of the Civil Procedure Code is to the following effect:—The Government may at its discretion exempt from personal appearance in court any person whose rank in the opinion of the Government entitles him to the privilege of exemption, and may at its discretion withdraw such privilege. The names of the persons so exempted (if any) residing within the jurisdiction of the principal civil court of each district shall, from time to time, be forwarded to such court by the local government, and a list of such persons (if any) shall be kept in such court, and in the several subordinate courts of the district.

**Sect. 407 (336).** *Court to summon jurors.*—The Court of Session shall ordinarily, three days at the least before the time fixed for the holding of the sessions, send a precept to a Magistrate directing him to summon as many persons, named in the said revised list, as seem to the Court to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any case about to be tried at such sessions.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them; the names so drawn shall be specified in the precept to the Magistrate.

**Sect. 408 (349).** *Summoning and empanelling jurors under Sect. 234.*—When a trial is to be held in which the accused person or one of the accused persons is entitled to be tried by a jury constituted under the provisions of Sect. 234, the Court of Session shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinafter prescribed, as many European and American jurors as are required for the trial, if there be so many on the jury-list of the District in which the trial is to be held.

The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons shall have been already summoned for jury trials at that session.

From the whole number of persons returned, the jurors who are to constitute the jury shall be taken by lot in the manner prescribed in Sect. 240, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as possible, has been obtained.

If a jury containing the requisite number of Europeans and Americans is not obtained, the accused person may elect to be tried by the Judge with the aid of assessors; otherwise he shall be tried by the jury obtained by the means aforesaid.

**Sect. 409 (337).** *Form and service of summons.*—Every summons to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor at a time and place to be therein specified.

The summons or a copy thereof shall be served on every juror or assessor personally.

If the juror or assessor summoned be absent from his usual place of abode, the summons may be left for him there with some adult male member of his family residing with him.

**Sect. 410 (338).** *Power to summon another set of jurors or assessors.*—The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in Sect.

407, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever it is found to be necessary.

**Sect. 411** (339). *Service of summons on officer of Government.*—If any person summoned to serve as a juror or assessor be in the service of Government or of a Railway Company, the summons shall be sent to him through the head officer of the office in which he is employed; and the Court may excuse the attendance of such person if it appear, on the representation of such head officer, that the person summoned cannot serve as a juror or assessor without inconvenience to the public service.

**Sect. 412** (340). *Court may excuse attendance of juror or assessor.*—The Court of Session may excuse any juror or assessor from attendance for reasonable cause.

**Sect. 413** (341). *List of jurors or assessors attending.*—At each session the Court shall cause to be made a list of the names of those who serve as jurors or assessors at such session. Such list shall be kept with the revised list of the jurors and assessors prepared under Sect. 402.

A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

**Sect. 414** (354). *Penalty for non-attendance of juror or assessor.*—Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable by order of the Court of Session to a fine not exceeding one hundred rupees.

Such fine shall be levied by the Magistrate of the District by attachment and sale of any moveable property belonging to such juror or assessor within the jurisdiction of the Sessions Court making the order. In default of recovery of the fine by such attachment and sale, such juror or assessor may be imprisoned in the civil jail for the space of fifteen days, if the fine be not sooner paid.

**Note.**—There is no appeal against an order by a Court of Session fining a juror or assessor for non-attendance.—Sect. 286 (h).



## CHAPTER XXX.

## MISCELLANEOUS PROVISIONS.

**Sect. 415** (130). *Procedure by Police upon seizure of stolen property.*—The seizure by any Police officer of property alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall thereupon make such order respecting the custody and production of such property as he thinks proper.

*Sale of perishable property.*—If such property is of a perishable nature, or if it appears to the Magistrate that its sale would be for the benefit of the owner, such Magistrate may at any time direct it to be sold, and shall hold the proceeds of such sale in trust for the owner, subject to the provisions contained in Sects. 416 and 417.

**Note.**—No property found in the possession of an unaccused person can be confiscated unless the proceedings prescribed in Sects. 416 and 417 have been strictly followed.—*Behery Staha v. Nubby Khan*, 9 W.R. Crim. 13.

Any magistrate may direct perishable property to be sold under this section.—Sect. 22.

See Sect. 132B of old Act.

**Sect. 416** (131). *Procedure where owner of property seized unknown.*—When the owner of any such property is unknown, the Magistrate may detain it, or the proceeds thereof, if sold, and, in case of such detention, shall issue a proclamation, specifying the articles of which such property consists or consisted, and requiring any person, who may have a claim thereto or to the proceeds thereof, to appear before him and establish his claim within six months from the date of such proclamation.

**Sect. 417 (132).** *Procedure if no claimant appears within six months.*—If no person within such period establishes his claim to such property or proceeds, and if the person, in whose possession such property was found, is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Magistrate of the District, or a Magistrate of a Division of a District, or, if duly authorized, a Magistrate of the first class; or, if it has been already sold by the Magistrate, the proceeds thereof shall be at the disposal of the Government.

An appeal shall be allowed, to the Court to which appeals against sentences would lie, in the case of every order passed under this section.

**Note.**—Where the person in whose possession the property has been found attempts to show that it was legally acquired by him, the Magistrate is bound to summon the witnesses he may name.—*In re Sookhan Sahoo*, 18 W.R. Crim. 5. A magistrate of the first class can be empowered to act under this section by the local government under Sect. 27. If a magistrate unempowered act under this section his proceedings are void.—Sect. 34.

**Sect. 418 (132A).** *Order for disposal of property regarding which offence committed.*—When the inquiry or trial in any Criminal Court is concluded, the Court may make such order as appears right for the disposal of any property, produced before it regarding which any offence appears to have been committed.

**Explanation.**—In this section the term “property” includes not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

**Note.**—The words, “inquiry or,” and also the above Explanation, are added by Act xi. of 1874.

**Sect. 419 (132B).** *Stay of such order.*—Any Court of appeal, reference, or revision may direct any such order passed by a Court subordinate thereto to be stayed, and may modify, alter, or annul it.

**Sect. 420 (132C).** *Order may take form of reference to Magistrate of District.*—The order, passed by any Court under Sect. 418 or 419, may be in the form of a reference of the property to the Magistrate

of the District, or to a Magistrate of a Division of a District, who shall in such cases deal with it as if the property had been seized by the Police, and the seizure had been reported to him in the manner hereinbefore mentioned.

**Sect. 421** (438). *Expenses of complainants and witnesses.*—Subject to any rules that may be passed by the Local Government, with the previous sanction of the Governor-General of India in Council, the Criminal Courts may order payment on the part of Government of the reasonable expenses of any complainant or witness attending for the purpose of any trial before such Court under this Act.

**Sect. 422** (431). *Interpreter to be bound to interpret truthfully.*—When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

**Note.**—Under Sect. 431 of the old Code it was provided that the interpreter should be sworn in the manner provided for witnesses.

## CHAPTER XXXI.

## LUNATICS.

**Sect. 423 (388).** *Procedure in case of accused being lunatic.*—When any person charged with an offence before a Magistrate, competent to try the case, appears to such Magistrate to be of unsound mind and incapable of making a defence, such Magistrate shall institute an inquiry to ascertain the fact of such unsoundness of mind, and shall cause the accused person to be examined by the Civil Surgeon of the District, or some other medical officer, and thereupon shall examine such Civil Surgeon or other medical officer as a witness, and shall reduce the examination into writing.

If such Magistrate is of opinion that the accused person is of unsound mind, he shall stay further proceedings in the case.

**Note.**—If a judge or magistrate has doubts as to the sanity of a prisoner, he should not be content merely with questioning him, but should try the fact of his sanity or insanity by examining the civil surgeon, and by taking evidence from the village where the prisoner lived, in order to ascertain whether he was insane at the time he committed the alleged offence, or whether he became insane afterwards, or whether he were insane at all.—*Reg. v. Heera Poonja*, 1 Bombay H.C. Rep. 33. If a prisoner, insane and unable to make his defence at the time of his being brought up for trial, be nevertheless tried, the proceedings are irregular, and must be quashed, even although he be acquitted on the ground that he was insane at the time he committed the act for which he was put on his trial.—*Reg. v. Makhun Chowdry*, Calcutta H.C., 9th September 1865.

So too if the magistrate acquit him by reason of his insanity at the time of trial.—*In re Romon Andheekaree*, 10 W.R. Crim. 37.

**Sect. 424.** *When accused appears to have been insane.*—When, from the evidence given before a Magistrate, there appears to be sufficient ground for believing that the accused person committed

an act which, if he had been of sound mind, would have been an offence triable exclusively by the Court of Session, and that he was at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law, such accused person shall, if he appears to be sane at the time of inquiry, be sent for trial by the Magistrate before the Court of Session :

If such accused person is a European British subject, the Magistrate shall follow the procedure prescribed in Chapter VII.

If an accused person appears to be insane at the time of inquiry, the Magistrate shall act in the manner provided in the last preceding section.

**Sect. 425 (389).** *Procedure in case of person committed before a Court of Session being lunatic.*—If any person committed for trial before a Court of Session shall at his trial appear to the Court to be of unsound mind and incapable of making his defence, the Court shall in the first instance try the fact of such unsoundness of mind, and if satisfied of the fact, shall give a special judgment that the accused person is of unsound mind and incapable of making his defence ; and thereupon the trial shall be postponed.

The trial of the fact of the unsoundness of mind of the accused person shall be deemed to be part of his trial before the Court.

**Note.**—Before the passing of Act xi. of 1874, it was held that trial in the first instance of the unsoundness of mind of the accused is part of the trial of the accused before the Court, and must therefore be conducted with the aid of a jury or assessors, as the case may be.—*Reg. v. Bheekoo Kalwar*, 10 B.L.R. 10. The second paragraph of this section, which is an addition under Act xi. of 1874, indorses this ruling.

**Sect. 426 (390).** *Release of lunatic pending investigation or trial.*—Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court of Session, as the case may be, if the offence of which such person is accused be bailable, may release such person, on sufficient security being given that he shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, and for his appearance when required.

*Custody of lunatic.*—If the offence be not bailable, or if the required bail be not given, the accused person shall be kept in safe

custody in such place as the Local Government to which the case shall be reported shall direct.

**Note.**—A person was placed in a lunatic asylum under this section, and was detained there after he recovered his reason. It was held that his detention was wrongful, but not illegal.—*In re Eldred*, Hyde's Bengal H.C. Reps., 173, 1863.

**Sect. 427** (391). *Resumption of inquiry or trial.*—Whenever an inquiry or trial is postponed under Sect. 423 or Sect. 425, the Magistrate or Court of Session, as the case may be, may, at any time, resume the inquiry or trial, and require the accused person, if detained in custody, to be brought before such Magistrate or Court; or, if the accused person has been released on security, may require his appearance.

The surety of such person shall be bound, at any time, to produce him to any officer whom the Magistrate or Court of Session appoints to inspect him; and the certificate of such officer shall have the same effect as the certificate of an Inspector General of Prisons or the Visitors of Lunatic Asylums, granted under Sect. 432.

**Sect. 428** (392). *Procedure on accused appearing before Magistrate or Court of Session.*—If, when the accused person appears or is again brought before the Magistrate or the Court of Session, as the case may be, it appears to such Magistrate or Court that the accused person is in a fit state of mind to make his defence, the inquiry shall proceed, or the accused person shall be put on his trial, as the case may require.

If it appears that the accused person is still of unsound mind, and incapable of making his defence, the Magistrate or Court of Session shall again act according to the provisions of Sect 423 or Sect. 425.

**Note.**—By Sect. 424, if the accused appear sane at the time of inquiry by the magistrate, but there also appears sufficient ground for believing he was insane at the time of committing the act, the accused shall be sent for trial before the Court of Session.

**Sect. 429** (393). *Finding in case of acquittal on ground of being lunatic.*—Whenever any person is acquitted upon the ground that, at the time at which he is charged with having committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law, the finding shall state specially whether such person committed the act or not.

**Note.**—See Sect. 84 of the Penal Code, p. 58.

**Sect. 430 (394).** *Person so acquitted to be kept in safe custody.*—Whenever such finding states that the accused person committed the act charged, the Magistrate or Court of Session, before whom the trial was held, shall, if the act charged would, but for the incapacity found, have amounted to an offence, order such person to be kept in safe custody, in such place and manner as to the Magistrate or Court of Session seems fit, and shall report the case for the order of the Local Government.

The Local Government may order such person to be kept in safe custody in a Lunatic Asylum or other suitable place of safe custody.

**Note.**—The following is a finding of acquittal, under Sect. 429, of the Calcutta High Court, taken as a model: “The Court, concurring with the assessors, finds that G. P. did kill B. M. by striking him on the head with a club; but that by reason of unsoundness of mind, he was incapable of knowing that he was doing an act which was wrong or contrary to law, and that he is not therefore guilty of the offence charged—viz., that he has committed culpable homicide, not amounting to murder, by causing the death of B. M., and has thereby committed an offence punishable under Sect. 304 of the Penal Code; and the Court directs that the said G. P. be acquitted, and that, under the provisions of Sect. 394” (Sect. 430 of the present Code) “of the Criminal Procedure Code, the said G. P. be kept in safe custody in the — pending the orders of the Local Government.”—8 W.R.C.L. 19.

**Sect. 431 (395, Cl. 1).** *Lunatic prisoners to be visited by Inspector General.*—When any person is confined under the provisions of Sect. 426 or Sect. 430, the Inspector General of Prisons, if such person is confined in a jail, or the Visitors of the Lunatic Asylum, or any two of them, if he is confined in a Lunatic Asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector General or by two of such Visitors as aforesaid; and such Inspector General or Visitors shall make a special report to the Local Government as to the state of mind of such person.

**Sect. 432 (395, Cl. 2).** *Procedure where lunatic prisoner is reported capable of making his defence.*—If such person is confined under Sect. 426, and such Inspector General or Visitors as aforesaid shall certify that, in his or their opinion, such person is

capable of making his defence, he shall be taken before the Magistrate or Court of Session, as the case may be, at such time as such Magistrate or Court of Session appoints; and such Magistrate or Court shall deal with such person under the provisions of Sect. 428; and the certificate of such Inspector General or Visitors as aforesaid shall be receivable as evidence.

**Sect. 433** (395, Cl. 3). *Procedure where lunatic confined under Sect. 430 is declared capable of being discharged.*—If such person is confined under the provisions of Sect. 430, and such Inspector General or Visitors as aforesaid certify that in his or their judgment he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon either order him to be discharged; or to be detained in custody; or to be transferred to a public Lunatic Asylum, if he has not been already sent to such an Asylum; and may appoint a commission consisting of a judicial officer not below the grade of a Sessions Judge, and two medical officers, whereof the chief medical officer attached to the Lunatic Asylum shall be one.

The said commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, who may order his discharge, or detention, as to it may seem fit.

**Sect. 434** (397). *Delivery of lunatic to care of relative.*—Whenever any relative or friend of any person detained under the provisions of Sect. 430 is desirous that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person detained shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may make an order that such person may be delivered to such relative or friend.

Whenever such person is so delivered over, it shall be upon condition that he shall be subject to the inspection of such officer as the Local Government appoints, and at such times as such Government directs.

The provisions of Sects. 431 and 433 shall apply to persons detained under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be dealt with as a certificate of the Inspector General of Prisons, or the Visitors of Lunatic Asylums under the said sections.



## CHAPTER XXXII.

## CONTEMPTS OF COURT.

**Sect. 435 (163).** *Procedure in certain cases of contempt.*—When any such offence as is described in Sects. 175, 178, 179, 180, or 228 of the Indian Penal Code, is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he be a European British subject or not, to be detained in custody; and, at any time before the rising of the Court on the same day, may take cognizance of the offence; and adjudge the offender to punishment by fine not exceeding two hundred rupees, and in default of payment, by imprisonment in the civil jail for a period not exceeding one month, unless such fine be sooner paid.

In every such case the Court shall record the facts constituting the offence, with any statement the offender may make, as well as the finding and sentence.

If the offence is under Sect. 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which such public servant was sitting, and the nature of the interruption or insult offered.

**Note.**—Under the summary procedure of this section, the court must sit as the court before which the offence was committed, and not in any other capacity, and is bound to take cognizance of the offence the day on which it was committed.—Reg. v. Chunder Seekur Roy, 12 W.R. Crim. 22.

A criminal court inflicting a fine for contempt of court should specifically record its reasons and the facts constituting the contempt, with any statement the offender may make, as well as the finding and sentence, otherwise the High Court will set aside the

order inflicting the fine.—*In re Panchanada Tambiram*, 4 Mad. H.C. Reps. 229.

A judge of a Small Cause Court, in the Mofussil, found a judgment debtor guilty of resisting an officer of the court in attaching property, in execution of a decree, and fined him. It was held that the judge acted without jurisdiction, as the section only applies to contempts committed in the presence of the court, and that the judge ought to have sent the judgment debtor for trial before a magistrate.—*In re Mani Chandra Dass*, 2 Ben. L.R.A.C.J. 188.

For the sections of the Penal Code referred to, see pp. 202, 204, and see Notes to Sect. 228 of the Penal Code on the cases of *Reg. v. Auba bin Bhivray*, and those following, p. 204.

Proceedings under this section would appear to constitute a trial, the facts constituting the offence being recorded, the statement of the offender, and the finding and sentence (Sect. 4).—See *Reg. v. Chappu Menon*, 4 Mad. H.C.R. 146.

**Sect. 436** (163). *Procedure where Court considers that accused should be imprisoned, or fined more than 200 rupees.*—If the Court, in any case, considers that a person, accused of any such offence, should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, such Court, after recording the facts constituting the offence, and the statement of the accused person as before provided, shall forward the case to a Magistrate, or, if the accused person be a European British subject, to a Magistrate of the first class who is a Justice of the Peace and a European British subject; and shall cause bail to be taken for the appearance of such accused person before such Magistrate, or, if sufficient bail be not tendered, shall cause such person to be forwarded under custody to such Magistrate.

If the case be forwarded to a Magistrate, he shall proceed to try the accused person in the manner provided by this Act for trials before a Magistrate; and such Magistrate may adjudge the offender to punishment, as provided in the section of the Indian Penal Code under which he is charged.

If, in the case of a European British subject, the Magistrate to whom he is forwarded considers the offence to require a more severe punishment than he is competent to award under Chapter VII. of this Act, he may commit the offender to the Sessions Court.

In no case tried under this section shall any Magistrate adjudge imprisonment or a fine exceeding two hundred rupees for any contempt committed in his own presence against his own Court.

**Note.**—This section embodies the rulings in the cases of *Reg. v. Rutton Sahoo*, 11 W.R. Crim. 49, and *Reg. v. Chunder Seekur Roy*, 12 W.R. Crim. 22.

Where an offence under this section is committed before an officer while acting in a particular capacity, he cannot take up and try the offence when acting in another capacity.—*Reg. v. Chunder Seekur Roy*, 12 W.R. Crim. 22.

The court before whom the offence is committed is bound to accept bail if sufficient be tendered it, offences under the sections of the Penal Code referred to in this section being all bailable.—See Sect. 388.

**Sect. 437.** *Discharge of offender on submission or apology.*—When any Court has adjudged an offender to punishment, or forwarded him to a Magistrate for trial for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may discharge the offender, or remit the punishment, on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

**Sect. 438.** *Procedure when offender is a European British subject.*—When any such offence as is described in Chapter X. of the Indian Penal Code (except Sects. 175, 178, 179, 180, and 228) is committed in contempt of the lawful authority of any Civil, Criminal, or Revenue Court, by a European British subject, such offence shall be cognizable only by a Magistrate of the first class who is a Justice of the Peace and a European British subject; and such Magistrate may deal with the offender on conviction in the same manner as is provided in that behalf in Sect. 74.

If such Magistrate considers the offence to require a more severe punishment than he is competent to award under the said section, he may commit the offender to the Sessions Court.

## P A R T X.

### CHARGE, JUDGMENT, AND SENTENCE.

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#### CHAPTER XXXIII.

##### OF THE CHARGE.

##### *Form of Charges.*

**Sect. 439 (234, 235).** *Charge to state offence.*—The charge shall state the offence with which the accused person is charged. If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

*How stated where offence has no specific name.*—If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the prisoner notice of the matter with which he is charged. The Act and section or sections of the Act against which the offence is said to have been committed must be referred to in the charge.

*What implied in charges.*—The fact that the charge is made shall be equivalent to a statement that every legal condition, necessary by law to constitute the offence charged, was fulfilled in the particular case.

*Language of charge.*—The charge may be written either in English or in the language of the district. If not written in a language understood by the prisoner, it must be read to him in a language which he understands.

*Previous conviction to be set out in charge.*—If the accused person has been previously convicted of any offence, and if it is intended to prove such previous conviction for the purpose of affecting the

punishment which is to be awarded, the fact of the previous conviction must be stated in the charge. If it is omitted, it may be added at any time before sentence is passed, but not afterwards.

*Illustrations.*

- (a) A is charged with the murder of B.

This is equivalent to a statement that A's act fell within the definition of murder given in Sects. 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the Penal Code; and that it did not fall within any of the five exceptions to Sect. 300, or that, if it did fall within exception 1, one or other of the three provisos to that exception applied to it.

- (b) A is charged under Sect. 326 of the Indian Penal Code, with voluntarily causing grievous hurt to B, by means of an instrument for shooting: this is equivalent to a statement that the case was not provided for by Sect. 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

- (c) A is accused of murder, cheating, theft, extortion, adultery, or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code, but the sections under which the offence is punishable must, in each instance, be referred to on the charge.

- (d) A is charged under Sect. 184 of the Indian Penal Code with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

**Note.**—Sect. 326 determines how a previous conviction shall be proved.

Sect. 105 of the Evidence Act i. of 1872, which is important in its bearing on this section, is as follows :—

“When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the

general exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the court shall presume the absence of such circumstances.

*“ Illustrations.*

- “(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A.
- “(b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control. The burden of proof is on A.
- “(c) Sect. 325 of the Penal Code provides that whoever, except in the case provided for by Sect. 335, voluntarily causes grievous hurt shall be subject to certain punishments. A is charged with voluntarily causing grievous hurt under Sect. 325. The burden of proving the circumstances, bringing the case under Sect. 335, lies on A.”

**Sect. 440.** *Particulars as to time, place, and person.*—The charge shall contain such particulars as to the time and place of the alleged offence, and the person against whom it was committed, as are reasonably sufficient to give notice to the accused person of the matter with which he is charged. •

**Sect. 441.** *When manner of committing offence must be stated.*—When the nature of the case is such that the particulars mentioned in Sects. 439 and 440 do not give sufficient notice to the accused person of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

*Illustrations.*

- (a) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.
- (b) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.
- (c) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

- (d) A is accused of obstructing B, a public servant, in discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.
- (e) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.
- (f) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

**Sect. 442.** *Forms in schedule.*—The charge may be in the form given in the third schedule to this Act, or to the like effect.

**Sect. 443.** *Effect of errors.*—No error either in the way in which the offence is stated or in the particulars required to be stated in Sect. 441, and no omission to state the offence, or to state those particulars, shall be regarded at any stage of the case as material, unless the person accused was in fact misled by such error or omission.

*Illustrations.*

- (a) A is charged under Sect. 242 of the Indian Penal Code with “having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit.” The word “fraudulently” being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.
- (b) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.
- (c) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the

omission to set out the manner of the cheating was in this case a material error.

- (d) A is charged with the murder of Khuda Baksh on the 21st January. In fact the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January. A was never charged with any murder but one, and had heard the inquiry before the Magistrate which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.
- (e) A was charged with murdering Haidar Baksh on the 20th January and Khuda Baksh (who tried to arrest him for that murder) on the 21st January. When charged for the murder of Haidar Baksh he was tried for the murder of Khuda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

**Note.**—See Sects. 283 and 444.

**Sect. 444.** *Prisoner may apply for amendment.*—Any accused person may apply to the Court by which he is tried for an amendment of the charge made against him, and in considering whether any error in a charge did in fact mislead the accused person, the Court shall take into account the fact that he did or did not make such an application.

**Sect. 445 (244).** *Court may amend a charge.*—Any Court may, either upon the application of the accused person or upon its own motion, amend or alter any charge at any stage of the proceedings before judgment is signed, or, in cases of trial before a Court of Session, before the verdict of the jury is delivered or the opinion of the assessors is expressed. Such amendment shall be read and explained to the accused person.

**Note.**—Amendments made in a charge ought to be made formally, and to appear on the face of the record.—*Reg. v. Feojdar Roy*, 9 W.R. Crim. 14. The High Courts Criminal Procedure Code, Sect. 10, provides expressly that an amendment or alteration in a charge may be made also on the application of the prosecutor. But



under this section the prosecutor could move the Court to amend on its own motion.

**Sect. 446.** *How Court of Session may deal with charge.*—If a prisoner is committed to the Court of Session, either without any charge at all, or upon a charge which the Court, upon reference to the proceedings before the committing Magistrate, considers improper, the Court of Session may draw up a charge for any offence, which it considers to be proved by the evidence taken before the committing Magistrate. A copy of such charge shall be given to the accused person.

This copy is to be given gratis.

**Sect. 447** (245). *When trial may proceed immediately after amendment.*—If the amendment or alteration is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused person in his defence, it shall be at the discretion of the Court, after making such amendment or alteration, to proceed with the trial as if the amended charge had been the original charge.

**Note.**—Where A and B were being jointly tried before a Court of Session, A for murder, and B for abetment of murder, a confession by A that he had committed the murder at the instigation of B was put in against A. Subsequently the charge against A was altered to one of abetment of murder, and the confession under Sect. 30 of the Evidence Act used also against B. The High Court held the original and amended charges so nearly related, that the trial might be fairly deemed a trial on the amended charge from the commencement; and no objection having been taken by B, who was represented by a competent pleader, to the admissibility of A's confession against him when the charge against A was altered, the session judge was justified in using the confession against B also.—*R. v. Govind Babli Raul*, 11 Bom. H.C.R. 278.

**Sect. 448** (246). *When new trial may be directed or trial suspended.*—If the amendment or alteration is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused person in his defence, the Court may either direct a new trial, or suspend the trial for such period as may be necessary to enable the accused person to make his defence to the amended or altered charge; and, after hearing his defence, the Court may further adjourn the trial, to admit of the appearance of

any witness, whose evidence the Court may consider to be material to the case, or whom the accused person may wish to be summoned in his defence.

**Sect. 449 (247).** *Prosecutor and accused person may recall witnesses.*—In all cases of amendment or alteration of a charge, the prosecutor and accused person shall be allowed to recall and examine any witness who may have been examined.

**Sect. 450.** *Previous sanction to be obtained if offence in new charge require it.*—If the offence stated in the new charge be one for which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained; unless sanction has been already obtained for a prosecution on the same facts as those on which the new charge was based.

**Sect. 451.** *Effect of material error.*—If any Appellate Court, or the High Court in the exercise of its powers of revision, is of opinion that any person, convicted of an offence, was in fact misled in his defence by an error in the charge, it shall direct a new trial to be had upon a charge amended in whatever manner it thinks proper. If such Court is of opinion that the facts of the case are such that no valid charge could be preferred against the person accused in respect of the facts proved, it shall quash the conviction.

### *Illustration.*

A is convicted of an offence under Sect. 196 of the Indian Penal Code upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine, was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

**Note.**—This illustration stands amended by Act xi. of 1874. The original illustration was of an offence under Sect. 188. Such an offence was not in point, for it required no charge to be drawn up.

*Joinder of Charges.*

**Sect. 452.** *Separate charges for distinct offences.*—There must be a separate charge for every distinct offence of which any person is accused, and every such charge must be tried separately, except in the cases hereinafter excepted.

*Illustration.*

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft, and the causing grievous hurt.

**Sect. 453.** *More offences than one of the same kind may be charged within a year of each other.*—When a person is accused of more offences than one of the same kind committed within one year of each other, he may be charged and tried at the same time for any number of them not exceeding three.

*Explanation.*—Offences are said to be of the same kind under this section if they fall within the provisions of Sect. 455.

**Sect. 454.** I. *Trial of more than one offence.*—If in one set of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried for every such offence at the same time.

II. *One offence falling within two definitions.*—If a single act falls within two separate definitions of any law, in force for the time being, by which offences are defined or punished, the person who does it may be charged with each of the offences so committed, but he must not receive a more severe punishment than could be awarded, by the Court which tries him, for either.

III. *Acts severally constituting more than one offence, but collectively coming within one definition.*—If several acts of which one or more than one would by itself constitute an offence, form, when combined, an offence under the provisions of any law, in force for the time being, by which offences are defined or punished, a person who does them may be charged with every offence which he may have committed, but he must not receive for such offences, collectively, a punishment more severe than that which might have been

awarded, by the Court trying him, for any one of such offences, or for the offence formed by their combination.

*Illustrations.*

To paragraph I.

- (a) A rescues B, a person in lawful custody, and causes grievous hurt to C, a constable in whose custody B was. A may be separately charged with, convicted of, and punished for offences under Sects. 225 and 333, Indian Penal Code.
- (b) A has in his possession several counterfeit seals with the intention of committing several forgeries. A may be separately charged with, convicted of, and punished for the possession of each seal for a distinct forgery, under Sect. 473, Indian Penal Code.
- (c) A, with intent to cause injury to B, institutes proceedings against him, knowing there is no just or lawful ground for such proceedings. A also falsely charges B with having committed an offence. A may be separately charged with, convicted of, and punished for two offences under Sect. 211, Indian Penal Code.
- (d) A, with intent to injure B, brings a false charge against him of having committed an offence. On the trial, A gives false evidence against B. A may be separately charged with, convicted of, and punished for offences under Sects. 211 and 194, or 195, Indian Penal Code.
- (e) A, knowing that B, a female minor, has been kidnapped, wrongfully confines her and detains her as a slave. A may be separately charged with, convicted of, and punished for offences under Sects. 368 (read with 367) and 370, Indian Penal Code.
- (f) A, with six others, commits the offences of rioting, grievous hurt, and of assaulting a public servant engaged in suppressing the riot. A may be separately charged with, convicted of, and punished for offences under Sects. 147, 325, and 152, Indian Penal Code.
- (g) A criminally intimidates B, C, and D at the same time. A may be separately charged with, convicted of, and punished for each of the three offences under Sect. 506, Indian Penal Code.

- (h) A intentionally causes the death of three persons by upsetting a boat. A may be separately charged with, convicted of, and punished for three offences under Sect. 302, Indian Penal Code.

To paragraph II.

- (i) A commits mischief by cutting down a tree in a Government forest. The tree overhangs the bank of a river and falls into the stream. A commits theft by having severed the tree and by floating it down the river to his village where he sells it. A may be separately charged with and convicted of offences under Sects. 426 and 379, Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under Sect. 379 only.
- (j) A wrongfully strikes B with a cane. A may be separately charged with and convicted of offences under Sects. 352 and 323 of the Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under Sect. 323 only.
- (k) A wrongfully kills a buffalo worth sixty rupees, belonging to B, and then takes away the carcass in a manner amounting to theft. A may be separately charged with and convicted of offences under Sects. 429 and 379, Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under Sect. 429 only.
- (l) Several stolen sacks of corn are made over to A and B, who know they are stolen property. A and B thereupon assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with and convicted of offences under Sects. 411 and 414, Indian Penal Code; but the Court which tries them may not inflict a severer sentence than if it had convicted them under one of those sections only.
- (m) A used a forged document in evidence in order to convict B, a public servant, of an offence under Sect. 167. A may be separately charged with and convicted of offences under Sects. 471 (read with 466) and 196 of the Indian Penal Code; but the Court which tries him may not inflict a

severer sentence than if it had convicted him under one of those sections only.

To paragraph III.

- (n) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with and convicted of offences under Sects. 454 and 497, Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under Sect. 497 only.
- (o) A robs B, and, in doing so, voluntarily causes hurt to him. A may be separately charged with and convicted of offences under Sects. 323, 392, and 394 of the Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under Sect. 392 or 394 only.
- (p) A entices B, the wife of C, away, and then commits adultery with her. A may be separately charged with and convicted of offences under Sects. 498 and 497, Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under Sect. 497 only.

**Note.**—This section must be read with its illustrations, as the words of the section are too wide taken alone, and must be cut down by the illustrations. Under the words of the section, leaving out of consideration the illustrations, a prisoner could be separately charged, convicted, and punished, for any two offences (and for the full amount of punishments awardable for each), of which the second was the substantive criminal act, which was the aim of the first, and therefore evidence of the intention of the first, if such two offences did not, combined, form one offence under the provisions of any law. But the illustrations (n) and (p) show that the framers of the section imagined it provided for such cases, and that the intention is, such two offences should be treated as offences which, combined, form one offence under the provisions of some law.

As an instance of this, take the case of an abduction with dishonest *intent* of removing moveable property. This constitutes one offence under Sect. 369; and if moveable property *is*, in fact, taken,

another offence is perpetrated, that of theft. The offence of theft, and that under Sect. 369, do not together form one offence so as to come under the provision of paragraph III., and therefore on the section there might be a separate charge, conviction, and punishment for each offence. But the illustrations (*n*) and (*p*) are in point, and show that in such a case a separate charge, conviction, and punishment was not intended.—*In re Nonjan*, 7 Mad. H.C.R. 375.

Where the accused were convicted of having set fire to a warehouse, with intent to destroy the goods stored therein, and convicted by the Session Judge under Sects. 435 and 436 of the Penal Code, and sentenced to a cumulative punishment; the High Court referring to paragraph II. of this section, reversed the conviction and sentence on the minor charge, holding the accused were not liable to a cumulative punishment.—*Reg. v. Dod Basaya*, 11 Bom. H.C.R. 13.

See Sect. 71, Penal Code, p. 38.

**Sect. 455.** *Where it is doubtful what offence has been committed.*—If a single act or set of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused person may be charged with having committed any such offence; and any number of such charges may be tried at once, or he may be charged in the alternative with having committed some one of the said offences.

#### *Illustration.*

A is accused of an act which may amount to either theft, receiving stolen property, criminal breach of trust, or cheating. He may be charged separately with theft, criminal breach of trust, and cheating, or he may be charged with having committed either theft or criminal breach of trust or cheating.

**Note.**—See Sect. 72 of the Penal Code, p. 39.

**Sect. 456** (56 to 59, 423, 424). *When a person charged with one offence he can be convicted of another.*—If in the case mentioned in the last section, one charge only is brought against an accused person, and it appears in evidence that he committed a different offence, for which he might have been charged under the provisions

of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

*Illustration.*

A is charged with theft. It appears that he committed criminal breach of trust or receiving stolen goods. He may be convicted of criminal breach of trust or receiving stolen goods, though he was not charged with it.

**Sect. 457.** *When offence proved included in offence charged.—*

When a person is charged with an offence, and part of the charge is not proved, but the part which is proved amounts to a different offence, he may be convicted of the offence which he is proved to have committed, though he was not charged with it.

*Illustrations.*

- (a) A is charged under Sect. 407, Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under Sect. 406.
- (b) A is charged with murder. He may be convicted of culpable homicide or of causing death by negligence.

Where a person is charged with an offence consisting of parts, a combination of some of which constitutes a complete offence, he may, under this section, be convicted of the latter, without being specifically charged, *only* when the graver charge gives notice of all the circumstances going to constitute the minor offence.—*R. v. Chand Nur*, 11 Bom. H.C.R. 240. See, too, *R. v. Salamat Ali*, 23 W.R. Crim. 59.

**Sect. 458.** *What persons may be charged jointly.—*When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence and another of abetment of or attempt to commit such offence, they may be charged and tried together or separately, as the Court thinks proper, and the provisions hereinbefore contained shall apply to all such charges.



*Illustrations.*

- (a) A and B are accused of the same murder. A and B may be charged and tried together for the murder.
- (b) A and B are accused of a robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.
- (c) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with the one theft, and B alone with the two other thefts.

**Sect. 459 (379A).** *Withdrawal of remaining charges on conviction on one of several charges.*—In trials before a Court of Session or High Court, when more charges than one are preferred against the same person, and when a conviction has been had on one or more of them, the Government Pleader or other officer conducting the prosecution may, with the consent of the Court, withdraw, or the Court of its own accord may suspend, the inquiry into the remaining charge or charges.

*Previous Acquittals or Convictions.*

**Sect. 460.** *Person once convicted or acquitted not to be tried for same offence.*—A person, who has once been tried for an offence and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried again on the same facts for the same offence, nor for any other offence for which a different charge from the one made against him might have been made under Sect. 455, or for which he might have been convicted under Sect. 456.

A person convicted or acquitted of any offence, may be afterwards tried for any offence for which a separate charge might have been made against him on the the former trial under Sect. 454, paragraph I.

A person acquitted or convicted of any offence in respect of any act causing consequences which, together with such act, constituted a different offence from that for which such person was acquitted

or convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was acquitted or convicted.

A person acquitted or convicted of any offence in respect of any fact may, notwithstanding such acquittal or conviction, be subsequently charged with and tried for any other offence which he may have committed in respect of the same facts, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

*Illustrations.*

- (a) A is tried upon a charge of theft as a servant, and acquitted. He cannot afterwards be charged upon the same facts either with theft as a servant, with theft simply, or with criminal breach of trust.
- (b) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with and tried for robbery.
- (c) A is tried for an assault, and convicted. The person afterwards dies. A may be tried again for culpable homicide.
- (d) A is tried under Sect. 270 of the Indian Penal Code, for malignantly doing an act likely to spread the infection of a disease dangerous to life, and is acquitted. The act so done afterwards causes a person permanently to lose his eyesight. A may be charged under Sect. 325 with voluntarily causing grievous hurt to that person.
- (e) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried for the murder of B on the same facts.
- (f) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph III.
- (g) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of

B. A may be subsequently charged with and tried for robbery on the same facts.

- (h) A, B, and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B, and C may afterwards be charged with and tried for dacoity on the same facts.

**Note.**—Where a prisoner is released by the Court of Session on the ground that the proceedings adopted in his case were illegal and irregular, this is no bar under this section to his being subsequently tried and convicted of the same offence.—*Reg. v. Wahed Ali*, 13 W.R. Crim. 42; and *Reg. v. Muthooraperchad Pandey*, 2 W.R. Crim. 10.

A discharge is not equivalent to an acquittal (Sect. 195), but the dismissal of a complaint under Chapter XVI. operates as an acquittal (Sect. 212), as does the withdrawal from prosecution of an offence that may be lawfully compounded, Sect. 188.

## CHAPTER XXXIV.

### OF THE JUDGMENT ORDER, AND SENTENCE.

**Sect. 461** (381). *Judgment to specify offence.*—When the trial in any Criminal Court is concluded, the Court, in passing judgment, if the accused person be convicted, shall distinctly specify the offence of which, and the section of the Indian Penal Code or other law under which, he is convicted ;

*Judgment in the alternative.*—Or if it be doubtful under which of two sections or under which of two parts of the same section such offence falls, the Court shall distinctly express the same, and pass judgment in the alternative, according to Sect. 72 of the said Code.

**Nota.**—Until the finding is recorded the trial is incomplete—Mad. H.C. Rulings, 7 April, 1869, 4 Mad. H.C.R. Appen. 42. It has been ruled that under no circumstances should an alternative finding be resorted to until both the committing magistrate and the Session Judge are satisfied that no reliable evidence is procurable to show as to which of the two charges the accused is guilty.—12 W.R. Crim. 11. The latter part of this section does not provide for an alternative finding as to two offences falling under the *same part* of the same undivided section of the Code ; but the form of the charge under Sect. 193 of the Penal Code in schedule iii. shows that such a finding is good.—Reg. v. Mahomed Humayoon Shah, 21 W.R. Crim. 72.

The Session Judge should be careful to record his findings on all the charges under which prisoners are sent up for trial.—Reg. v. Mahomed Ali, 13 W.R. Crim. 50.

For Sect. 72 of the Penal Code, see p. 39.

**Sect. 462.** *When judgment is to be pronounced.*—In trials with

assessors, when the exhibits have been perused, the witnesses examined, and the parties heard in person or by their respective pleaders, the Court shall pronounce its judgment. The judgment shall be pronounced in open Court, either immediately or on some future day, of which due notice shall be given to the parties or their pleaders.

**Sect. 463** (430). *Judgment to be written in English or language of district.*—The judgment or final order shall be written by the presiding officer of the Court in English or the language of the district.

If the language of the Judge be not English the judgment shall not be written in English unless the Judge be sufficiently conversant with the English language to be able to write a clear and intelligible decision in that language.

**Sect. 464** (429). *Judgment what to contain.*—The judgment or final order shall contain the point or points for determination, the finding thereupon, and the reasons for the finding, and shall be dated and signed by the Judge in open Court at the time of pronouncing it. When a judgment or final order has been so signed, it cannot be altered or reviewed by the Court which gives such judgment or order. It shall specify the offence of which the accused person is convicted, and the punishment to which he is sentenced; or if it be a finding of acquittal, it shall direct that he be set at liberty.

The judgment or order shall be explained to the accused person or persons affected by it, and on his application a copy thereof shall be given to him without delay free of cost and in his own language if practicable, if not, in the language of the Court.

*Judgment to be translated.*—The original shall be filed with the record of proceedings, and a translation thereof, where the original is recorded in a different language from that in ordinary use in the district, shall be incorporated in the record of the case.

In trials by Jury the Court need not state its reasons for its judgment, but shall record the heads of the charge to the Jury.

If the Judge differ from the Jury and determine to submit the case to the High Court, he shall record the grounds of his opinion.

Nothing herein contained shall prevent any Court from recalling any order other than a final order.

No error or defect in any judgment shall invalidate the proceedings :

where such error or defect is in a matter not affecting the merits of the case.

**Note.**—Sect. 255, which applies to trials by the Court of Session, provides that a statement of the judge's direction to the jury shall form part of the record. And under this section the heads of the charge to the jury must be recorded at sufficient length to enable the Appellate Court, if necessary, to decide on a question of misdirection to the jury.—*Reg. v. Kasim Shaikh*, 23 W.R. Crim. 32.

The last paragraph is added under Act xi. of 1874 ; its meaning was held as implied by the section as it originally stood. The provision in paragraph II, that the judgment shall be given the accused free of cost, is also added under Act xi. of 1874.

## CHAPTER XXXV.

### PROSECUTIONS IN CERTAIN CASES.

**Sect. 465.** *Prosecutions for offences against the State.*—A complaint of an offence punishable under Chapter VI. of the Indian Penal Code, except Sect. 127, or punishable under Sect. 294A of the said Code, shall not be entertained by any Court, unless the prosecution be instituted by order of, or under authority from, the Governor General of India in Council, or the Local Government, or some officer empowered by the Governor General in Council to order or authorize such prosecution, or unless instituted by the Advocate General.

**Note.**—For Sects. 127 and 294 of the Penal Code, see pp. 107, 244.

**Sect. 466** (167). *Prosecution of Judges and public servants.*—A complaint of an offence committed by a public servant in his capacity as such public servant, of which any Judge or any public servant not removeable from his office without the sanction of the Government is accused as such Judge or public servant, shall not be entertained against such Judge or public servant except with the sanction or under the direction of the Local Government, or of some officer empowered by the Local Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power so to sanction or direct such prosecution the Local Government shall not think fit to limit or reserve.

No such Judge or public servant shall be prosecuted for any act purporting to be done by him in the discharge of his duty unless with the sanction of Government.

*Sanction when to be given.*—The sanction must be given before the commencement of the proceedings.

The Local Government may limit the person by whom, and the

manner in which, the prosecution is to be conducted, and may specify the Court before which the trial is to be held.

In this section the expressions "Judge" and "public servant" shall be taken to have the meaning assigned to them respectively by the Indian Penal Code.

**Nota.**—The last paragraph is added under Act xi. of 1874. Sects. 19 and 21 of the Penal Code define the meaning of "judge" and "public servant." See pp. 22, 23.

The provisions that sanction must be given before the commencement of the proceedings, and that the local government may limit the person by whom, and manner in which, the prosecution is to be conducted, and may specify the court before which the trial is to be held, are not to be found in the corresponding Sect. 167 of the old Act; but under that Act it was ruled that such sanction must be so given, and that the local government had such power.—*Reg. v. Parshram Keshav*, 7 Bom. H.C. Reps. C.C. 61; *Reg. v. Vinayek Divakar*, 8 Bom. H.C. Reps. C.C. 32.

The words "not removable from his office without the sanction of the Government," refer only to the words "public servants" which precede them, and the sanction of Government is required for the prosecution of any judge, if a complaint is made against him as judge. Had the meaning been otherwise, the words "public servants" would have sufficed.—*Mad. H.C. Rulings*, 29th March 1871; 6 *Mad. H.C. Reps. Appen. 22*.

This section differs from Sect. 167 of the old Code.—See *Reg. v. Malhar Ramchandra*, 7 Bom. H.C.R.C.C. 64. The report or application of the public servant or court is a sufficient complaint. Sect. 470, Expl.

It is to be noticed that under this section it is "a complaint of an offence committed by a public servant *in his capacity as such public servant*" which, for prosecution, requires the consent of Government; offences therefore committed by public servants as individuals in their private capacity require no such consent for prosecution, and are to be dealt with as ordinary charges.—*Reg. v. Parshram Keshav*, 7 Bom. H.C.R.C.C. 61, and *Cir. 20 Cal. H.C.*, October 4, 1864. The discrepancy between the decision in the Bombay case and that at Calcutta is not real, and is explained away by Mr Justice Melvill's judgment in the Bombay case.

**Sect. 467 (168).** *Prosecution for contempts of the lawful authority*



of *public servants*.—A complaint of any offence described in Chapter x. of the Indian Penal Code, not falling within Sects. 435 or 436 of this Act, shall not be entertained in any Criminal Court except with the sanction or on the complaint of the public servant concerned, or of his official superior.

The prohibition contained in this section shall not apply to the offences described in Sects. 189 and 190 of the Indian Penal Code.

**Note.**—Chapter x. of the Penal Code includes Sects. 172 to 190, pp. 143-160.

For Sects. 189, 190 of the Penal Code, see pp. 159, 160.

In the case of *Reg. v. Ram Golam Sing* (11 W.R. Crim. 32), it was held that a general authority given to an inspector by the district superintendent of police was a sufficient authority to the former to institute prosecutions for false charges preferred to the police in his division. In a case in which a false charge was brought, a magistrate gave permission, under Sect. 468, to prosecute B of an offence under Sect. 211 of the Penal Code. The magistrate tried the complaint on a charge under Sect. 211, but subsequently framed a charge and convicted B under Sect. 182 of the Penal Code; and it was held that the magistrate was wrong in framing the charge under Sect. 182 without obtaining the previous sanction of the Criminal Court which had heard the previous complaint of B.—*Raj Coomar v. Kirthu Agha*, 13 W.R. Crim. 67. A conviction by the same magistrate, whose summons was treated with contempt, is an implied sanction to the prosecution—*Reg. v. Ganu bin Tattia Selar*, 5 Bom. H.C. Reps. C.C. 38; and so also is a committal by the magistrate before whom false evidence has been given—*Reg. v. Mahomed Khan valad Iman Khan*, 6 Bom. H.C. Reps. C.C. 54: it is not sufficient, however, to give a sanction to a prosecution in respect of any false evidence given by the prisoner contained in the depositions attached to the petition for leave to prosecute—*Reg. v. Kadir Bux*, 11 W.R. Crim. 17.

**Sect. 468 (169).** *Prosecution for certain offences against public justice.*—A complaint of an offence against public justice, described in Sects. 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228 of the Indian Penal Code, when such offence is committed before or against a Civil or Criminal Court, shall not be entertained in the Criminal Courts except with the sanction of the

Court before or against which the offence was committed, or of some other Court to which such Court is subordinate.

**Note.**—For the sections of the Penal Code referred to in this section, see pp. 162-164, 179, 181, 182, 184, 202.

The object of this section is to insure that the prosecution shall only be instituted after due consideration by the court before whom the false evidence was given, or on the part of a court to which that court is subordinate. Therefore, when a magistrate perused the papers of a case which had been sent to him by a subordinate magistrate for consideration, and then sent the papers on to the district superintendent of police with an opinion adverse to the prisoner, and the magistrate subsequently, on the application of the superintendent, issued a warrant against the prisoner for giving false evidence, it was held that the issue of the warrant was sufficient sanction on the part of the magistrate.—*Reg. v. Mahomed Hossein*, 16 W.R. Crim. 37.

Although a civil court acted irregularly in sending to the magistrate for investigation, a case of using or attempting to use false evidence, when no suit was pending in the court, yet as the court had given its sanction to the prosecution, it was held competent to the magistrate, under Sect. 142, without a complaint to proceed with the investigation and commit for trial, if necessary.—*Reg. v. Doorga Nath Roy*, 8 W.R. Crim. 9. No appeal lies from an order of a civil court directing a criminal prosecution for forgery committed before it.—*Gunga Narain Sircar v. Azeezoonissa Beebee*, 5 W.R. Misc. App. 18.

It is very undesirable for the High Court, except under peculiar circumstances, to entertain, in the first instance, an application for a prosecution for perjury. Such application ought, in the first instance, to be made to the subordinate court.—*In re Sheebpershad Chuckerbutty*, 17 W.R. Crim. 46.

If the court before which the offence was committed refuse to sanction a prosecution, and application for sanction be made to the High Court, the High Court, though having power, will not interfere unless very strong grounds be shown.—*Money Mohun Dey v. Dinonath Mullick*, 22 W.R. Crim. 11.

**Sect. 469** (170). *Prosecution for certain offences relating to documents given in evidence.*—A complaint of an offence relating to documents described in Sects. 463, 471, 475, or 476 of the Indian

Penal Code, when the document has been given in evidence in any proceedings in any Civil or Criminal Court, shall not be entertained against a party to such proceedings, except with the sanction of the Court in which the document was given in evidence, or of some other Court to which such Court is subordinate.

**Note.**—For the sections of the Penal Code referred to in this section, see pp. 390, 402, 407.

This section refers only to cases where a forged document has been put in evidence in a civil or criminal court; in other cases a magistrate is competent, *proprio motu*, to inquire into allegations of forgery, and no sanction under this section is necessary.—Reg. v. Ramdharry Singh, 10 S.W.R. Crim. 5.

A collector to whom application is made for a new stamp under clause 2, sect. 50 of Act x. 1862, does not sit as a court, civil or criminal; and the application therefore not being a document given in evidence in any proceeding of a court, this section does not apply to such a case.—Reg. v. Gour Mohun Sen, 11 W.R. Crim. 48, and 3 Ben L.R.A. Cr. J. 6.

In giving authority for a prosecution for forgery, the court should state distinctly what the document is for which a prosecution is to be held.—Reg. v. Gobind Chunder Ghose, 10 S.W.R. Crim. 41; and Reg. v. Ooma Moya Debea, 13 W.R. Crim. 25.

A specially-registered bond was presented before a small cause court judge for execution under Act xx. of 1856, and a decree passed upon it in the usual form. Subsequently the registrar sanctioned the prosecution of the decree-holder on the ground that the bond was a forgery. The small cause court judge thereupon, on application made, without taking any evidence or making further inquiry, sanctioned the prosecution under this section, and it was held that he was justified in so doing.—Reg. v. Nawah Sing, 3 Ben. L.R.A. Cr. J. 9.

A civil court has no power under this section to make an order sanctioning a prosecution for an offence committed before the court of the principal Sadr Amin on the small cause court side: that court not being subordinate to the civil court.—*Ex parte Mahalingaiyan*, 6 Mad. H.C. Reps. 191.

It has been ruled that a conviction is not bad because the judge who sanctions the criminal proceedings under this section tries the case himself.—Reg. v. Subal Chunder Gangooly, 22 W.R. Crim. 16.

But if the judge giving such sanction constituted the court before which the document in question was given in evidence, such a conviction, it appears, would be bad. See Sect. 473, and the Note thereto.

**Sect. 470.** *Nature of sanction necessary.*—The sanction referred to in Sects. 467, 468, and 469, may be expressed in general terms, and need not name the accused person.

Such sanction may be given at any time, and a sanction under any one of the three last preceding sections shall be deemed sufficient authority for the Court to amend the charge to one of an offence coming within either of the two remaining sections, if the facts disclose such offence.

*Explanation.*—In cases under this chapter, the report or application of the public servant or Court shall be deemed sufficient complaint.

*Note.*—When the sanction is not given, the defect is not cured by Sect. 283—*Reg. v. Mohima Chunder*, 15 W.R. Crim. 45.

The sanction for the prosecution was accorded by an assistant sessions judge in the following terms: "There is no doubt that Tai, Baji, and Bala, these three persons, made before me certain statements contradictory of the statements which they made before the committing magistrate. Therefore, if from such statements they may be liable to any charge, there is sanction from here for their prosecution." It was held that this was a sufficient sanction without the specification of the particular section under which accused were to be charged.—*Reg. v. Tai*, 8 Bom. H.C. Reps. C.C. 24. This case was decided under Sects. 169, 170 of the old Act (xxv. of 1861); and the section under consideration, in determining that "the sanction referred to in Sects. 467, 468, and 469, may be expressed in general terms," follows the ruling therein laid down. But a sanction for a prosecution under this section must designate the court where the false statement is alleged to have been made, and the occasion on which it was committed. And it is desirable, if not necessary, that a description of the offence intended to be prosecuted should be stated in general terms, although details may be omitted.—*In re Balaji Sitaram*, 11 Bom. H.C.R. Ap. Cr. Ju. 34.

As to the words, "such sanction may be given at any time," the same words being found in Sects. 169, 170, of the old Act (xxv. of

1861), a distinction has been made by the rulings between sanction given by the court to a prosecution for an offence committed before itself, and sanction given by a court when the offence was committed in a subordinate court. In the case of *Reg. v. Mohima Chunder*, it was held that the sessions judge cannot give a sanction after committal, the *offence not having been committed in his court*.—15 W.R. Crim. 45. In *Reg. v. Golak Sing*, it was held that sanction to a prosecution for perjury may be given by the court *before which it was committed* at any time, even after the order of committal to the sessions has been made.—3 Ben. L.R.A. Cr. J. 10. But the sanction must be given within such a time as not to unduly prejudice the accused, or put him in a worse position than he was before.—*In re Seetaram Sahu*, 18 W.R. Crim 62.

Where it is intended to charge a person alternatively with having made a false statement in the court of a magistrate, or a false statement in the court of a subordinate judge, there must be a proper sanction for a prosecution on each branch of the alternative.—*In re Balaji Sitaram*, 11 Bom. H.C.R. Ap. Cr. Ju. 34.

**Sect. 471** (171). *Procedure in cases mentioned in Sects. 467, 468, and 469.*—When any Court, Civil or Criminal, is of opinion that there is sufficient ground for inquiring into any charge mentioned in Sects. 467, 468, and 469, such Court, after making such preliminary inquiry as may be necessary, may either commit the case itself, or may send the case for inquiry to any Magistrate having power to try or commit for trial the accused person for the offence charged.

Such Magistrate shall thereupon proceed according to law, and the Court may send the accused person in custody or take sufficient bail for his appearance before such Magistrate, and may bind over any person to appear and give evidence on such trial or inquiry.

The Magistrate receiving the case may, if he is authorized to make transfers of cases, transfer the inquiry to some other competent Magistrate instead of completing the inquiry himself.

**Note.**—The court must in every instance hold an investigation, to see if there is a *prima facie* case—*Reg. v. Nowarish Ahmed Ali Khan*, 2 Agra, 318. This investigation may be *ex parte*.—*Chota Sadoo Peadah v. Bhoobun Chuckerbutty*, 5 R.C.C. Cr. 19; *Marshall's Bengal App. Rep.*; and 9 W.R. 3. It also need not be upon oath, as it is not judicial, and the magistrate, on receiving such a case,

should commence it *de novo*, Jud. Comr. Punjab, 1610, 1st April 1862. See also *Reg. v. Nujjum Ali*, 6 W.R. 41. It may after this send the case to a magistrate for a regular preliminary inquiry, under Chap. XII. *post*. But if the court proceeds under Sect. 474 to commit direct to the Court of Session, it must itself hold a complete preliminary inquiry, framing the charge, and taking depositions.—*Reg. v. Radha Nauth Mozoomdar*, 5 R.C.C. Cr. 19.

The Court, on sending a case for inquiry to a magistrate, must state the specific charge to be inquired into, not send the case to be *generally* inquired into and investigated. — *In re Kali Prosunno Bagchee*, 23 W.R. Crim. 39.

A case having once been sent to a magistrate for investigation and commitment, if necessary, should not be returned to the civil court by the magistrate; nor can the civil court, after it has sent a case to a magistrate, commit that case to sessions.—*Reg. v. Jan Mahomed*, 12 W.R. Crim. 41; *Reg. v. Amruta Nathu*, 7 Bom. H.C. Reps. C.C. 29.

A magistrate in his capacity of collector should not give his evidence before himself as magistrate.—*Reg. v. Nehal Mahatan*, 5 R.C.C. Cr. 27, and 9 W.R. Crim. 13.

A court has power under this section to order that the magistrate shall investigate whether forgery has been committed with reference to a particular document offered in evidence before such court, without particularizing any individual as the suspected person, or requiring that the magistrate should inquire whether forgery was committed by any particular person—*Essan Chunder Dutt v. Baboo Prannauth Chowdry*, Marshall's Bengal App. Rep. 270; but, before committal, the accused must be present in that character—*Reg. v. Kaliehurn Lahoree*, 5 R.C.C. Cr. 41, and 9 W.R. Crim. 54.

A civil judge has authority to make an order directing the magistrate to investigate whether certain documents used before the Sudder Ameen were forged, and if so, by whom, although the Sudder Ameen had previously been applied to, and had refused to make the order.—*Radhanauth Banerjee v. Kangallee Mollah*, Marshall's Bengal App. Rep. 407.

When an Appellate Court directs further evidence to be taken under Sect. 282, it is competent for the subordinate court before which such evidence is taken, if any offence against public justice, as described in Sect. 468, is committed before it, by a witness whose evidence is recorded therein, to send the case for investiga-

tion to a magistrate under this section.—*Reg. v. Baktear Maifaraz*, 6 Ben. L.R. 698, F.B. and 15 W.R. Crim. 64.

Under the old Code, where a small cause court judge sent a case for investigation to the head assistant magistrate, who transferred the case for investigation to the sub-magistrate, who committed the case to the sessions, it was held that the commitment was bad.—*Mad. H.C. Rulings*, November 20, 1870, 6 *Mad. H.C. Reps.*, Appen. 41; but now see the last clause of this section, which is new.

Criminal proceedings cannot be stayed pending an appeal.—*Ram. Pershad Hazaree v. Soomuthra Dabee*, 5 W.R. Misc. App. 24.

A magistrate may, under Sect. 195, discharge an accused sent to him under this section, if in his opinion the evidence against him does not warrant his committal for trial—*Reg. v. Pandurang Mayral*, 5 Bom. H.C. Reps., C.C. 41; but after commencing an inquiry under this section, he cannot in his discretion discharge the accused, if there be sufficient evidence—as, for instance, the accused's confession—to warrant committal.

A civil court may transfer a case to the criminal court for investigation without specifying the particular officer by whom it is to be investigated—*Reg. v. Madhub Chand Misser*, 13 W.R. Crim. 45; and the form of the transfer may be most general, both as to the facts and the parties who may be guilty.

See Sects. 27 and 44 as to what magistrates have power to transfer cases.

**Sect. 472.** *Power of Court of Session as to such offences committed before itself.*—A Court of Session may charge a person for any such offence committed before it or under its own cognizance, if the offence be triable by the Court of Session exclusively, and may commit or hold to bail and try such person upon its own charge.

In such case the Court of Session shall have the same power of summoning and causing the attendance at the trial of any witnesses for the prosecution or for the defence as is vested in a Magistrate by this Act.

Such Court may direct the Magistrate to cause the attendance of such witnesses on the trial.

**Note.**—A sessions judge can only commit a person to the court of session under this section for an offence, where such offence has been committed before the session court, or under its own

cognizance, and is triable exclusively by the sessions court. Offences under Sect. 193 of the Penal Code were, by the old Criminal Procedure Code, triable exclusively by the sessions court, but are now triable by the sessions court or a magistrate of the first class. See schedule iv.

**Sect. 473.** *Offences in contempt of Court how to be disposed of.*—Except as provided in Sects. 435, 436, and 472, no Court shall try any person for an offence committed in contempt of its own authority.

**Note.**—In the case of *Reg. v. Chandra Sekhar Roy* (5 Ben. L.R. 100, and 13 W.R. Crim. 66), Jackson, J., said: “It appears to me now that the provisions of Sect. 171 (Sect. 471 of this Code) recognize the general principle that no one should be judge in a case in which he himself is interested. The only exceptions to that rule which are allowed are to be found in Sect. 163 (Sects. 435, 436 of this Code), where, from the necessity of the case, a court, civil, criminal, or revenue, is empowered to take immediate and summary notice of offences of certain descriptions, committed in view of the court itself; and in Sect. 172 (Sect. 472), where the Court of Session is empowered to charge for any offence of the kind specified in Sects. 168, 169, and 170 (Sects. 467, 468, and 469 of this Code), committed before it or under its own cognizance, if the offence be triable by the Court of Session exclusively, and to commit or hold to trial or try such person on its own charge. Probably the exception in favour of the Court of Session is based upon the facts that that court either acts with the aid of assessors or tries by jury.” The above case was decided under the old Code. The present Sect. 473 is entirely new. “The words ‘in contempt of its own authority,’ appear *prima facie* to narrow the prohibition to cases falling within Chapter X. of the Penal Code; but Sect. 435 embraces also Sect. 228 of the Penal Code, which is in Chapter XI. Further, Sect. 472 is treated as a limitation of the prohibition of a court trying offences committed in contempt of its own authority. Now the Court of Session has not exclusive jurisdiction over any offence in Chapter X. of the Penal Code. It seems clear, therefore, that the intention of the Legislature, though the words used are most inapt, was to extend the prohibition, save in the excepted cases, to all offences mentioned in Sects. 467, 468, and 469.”—*Rulings*, March 24, 1873, 7 Mad. H.C. Reps. 17, and November 6, 1873, 7



Mad. H.C. Reps. 28. In *Reg. v. Naoranbeg Dulabeg*, 10 Bom. H.C. Reps. 73, it was held that every attempt to pervert the proceedings of a court to an improper end, is a contempt of its authority, and that the offence, therefore, if committed before a magistrate, cannot be tried by him. Followed in *Reg. v. Ranchhad Dayal*, 10 Bom. H.C.R. Ap. Cr. Ju. 424; but, *contra*, in *re Sufatoolah*, 22 W.R. Crim. 49. In this last case, however, (the charge being that of having given false evidence), Jackson, J., while ruling that the prohibition in this section extends only to offences under Chapter X. and Sect. 228 of the Penal Code, held that under Sect. 471, the judge before whom the false evidence was given, was bound either to commit or send the case for inquiry to another magistrate.

For the purposes of this section, an assistant session judge is a different court from the session judge.—*R. v. Gulabdas Kuberdas*, 11 Bom. H.C.R. 98.

**Sect. 474 (173).** *Power of Civil Courts to complete investigation and commit to Court of Session.*—In any case triable by the Court of Session exclusively, any Civil Court before which such offence was committed may, instead of sending the case for inquiry to a Magistrate, complete the inquiry itself, and commit or hold to bail the accused person to take his trial before the Court of Session.

For the purposes of an inquiry under this section, the Civil Court may exercise all the powers of a Magistrate, and its proceedings in such inquiry shall be deemed to have been held by a Magistrate.

If a Civil Court sends a case for inquiry and commitment to a Magistrate he is bound to receive and dispose of it; but if a Civil Court makes a commitment it shall complete the inquiry itself.

**Note.**—For cases triable exclusively by the Court of Session, see the schedule.

**Sect. 475 (174).** *Procedure of Civil Court in such cases.*—When any such commitment is made by order of a Civil Court, the Court shall frame a charge in the manner hereinbefore provided, and shall send the same with the order of commitment and the record of the case to the Magistrate of the District, or other Magistrate of the first class, and such Magistrate shall bring the case before the Court of Session, together with the witnesses for the prosecution and defence.

**Sect. 476 (175).** *Court may exercise all powers of Magistrate as to binding over persons to give evidence.*—Whenever any Court of

Session or Civil Court commits or holds to bail any person for trial under Sects. 472, 474, or 475, it may also bind over any person to give evidence, and for that purpose may exercise all the powers of a Magistrate.

**Sect. 477** (176). *Procedure where offence triable only by Session Court is committed before Magistrate not empowered to commit to such Court.*—If any such offence, triable by the Court of Session exclusively, be committed before a Magistrate not empowered to commit for trial before a Court of Session, he shall send the case to a Magistrate competent to make such commitment, who shall proceed to pass such order in the case as he thinks fit.

**Sect. 478** (177). *Prosecution for adultery.*—A complaint of an offence under Sect. 497 of the Indian Penal Code shall not be instituted except by the husband of the woman, or by any person under whose care she was living at the time when the adultery was committed.

**Note.**—For Sect. 497 of the Penal Code, see p. 36.

**Sect. 479** (178). *Prosecution for enticing away a married woman.*—A complaint of an offence under Sect. 498 of the Indian Penal Code shall not be instituted except by the husband of the woman, or by the person having care of such woman on behalf of her husband.

**Note.**—For Sect. 498 of the Penal Code, see p. 442.

## PART XI.

### PREVENTIVE JURISDICTION OF MAGISTRATES.

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#### CHAPTER XXXVI.

##### OF THE DISPERSION OF UNLAWFUL ASSEMBLIES.

**Sect. 480 (111).** *Assembly to disperse on command of Magistrate or Police officer.*—Any Magistrate or officer in charge of a Police-station may command any unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public peace to disperse, and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

**Note.**—This chapter “shall be deemed to apply to the towns of Calcutta, Madras, and Bombay, and the word ‘magistrate,’ wherever it occurs in the said chapter, shall be deemed to include a magistrate of police.” See Sect. 43 of Act xi. of 1874.

Sect. 141 of the Penal Code declares what is an unlawful assembly, p. 115.

A police-officer may, without orders from a magistrate, and without a warrant, arrest any one being a member of an unlawful assembly, or against whom a reasonable complaint has been made, or a reasonable suspicion exists, that he has been concerned as a member of an unlawful assembly. Sect. 92 and schedule hereto annexed, which shows that being a member of an unlawful assembly is a cognizable offence.

**Sect. 481.** *Use of force to disperse.*—If, upon being so commanded, any such assembly does not disperse, or if, without being

so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a Police-station may proceed to disperse such assembly by force, and may require the assistance of any person, other than any European or Native Troops of Her Majesty acting as such, for the purpose of dispersing it, and arresting the persons who form part of it.

**Note.**—See note to previous section.

**Sect. 482.** *Use of Military Force.*—If an unlawful assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by Military Force.

**Sect. 483.** *When use of Military Force is not an offence.*—No Magistrate shall be held to commit any offence by ordering the dispersion by Military Force of any assembly, the dispersion of which he regards on reasonable grounds and in good faith as necessary to the public security.

**Note.**—See Sect. 52 of the Penal Code, p. 31.

**Sect. 484.** *Duty of officer commanding troops required by Magistrate to disperse assembly.*—When a Magistrate determines to disperse an Assembly by Military Force, he may require any officer in command of any of Her Majesty's Troops, whether European or Native, to disperse such assembly by such force, and it shall be the duty of every such officer to obey every such requisition in such manner as in his discretion appears proper; but in doing so he shall use as little force and do as little injury to person and property as is consistent with dispersing the assembly and arresting and detaining such persons as he may be directed by the Magistrate to arrest and detain, or as it may be necessary to arrest and detain for the purpose of dispersing the assembly.

**Sect. 485.** *What acts done in obeying requisition not an offence.*—No officer obeying any such requisition shall be held to have committed any offence by any act done by him in good faith in order to comply with it.

**Sect. 486.** *Acts of inferior officers and soldiers done in obedience to order not an offence.*—No inferior officer or private soldier shall be held to have committed any offence by any act done for the dispersion of any such assembly in obedience to any order which he was bound by the Mutiny Act or by the Indian Articles of War to obey.

**Sect. 487.** *Duty of Queen's officers to suppress assembly.*—When the public security is manifestly endangered by an unlawful assembly, and when no Magistrate can be communicated with, any Commissioned Officer of Her Majesty's European or Native Forces may disperse any such assembly by military force, and in doing so he shall have the same protection as a Magistrate, and all officers and soldiers acting under his orders shall have the protection mentioned in Sect. 486 ; but as soon as such Commissioned Officer can communicate with any Magistrate, it is his duty to do so.

**Sect. 488.** *Sanction required to prosecutions for acts done under Sects. 481, 482, 484, and 487.*—No prosecution against any Magistrate, officer, or soldier, for any act done under the provisions contained in Sects. 481, 482, 484, and 487, shall be instituted in any Criminal Court except with the sanction of the Government of India, or the Government of Madras or Bombay.

**Note.**—This chapter “shall be deemed to apply to the towns of Calcutta, Madras, and Bombay, and the word ‘magistrate,’ wherever it occurs in the said chapter, shall be deemed to include a magistrate of police.” See Sect. 43 of Act xi. of 1874.

## CHAPTER XXXVII.

## OF SECURITY FOR KEEPING THE PEACE.

**Sect. 489** (280). *Personal recognizance to keep the peace in cases of conviction.*—Whenever a person accused of rioting, assault, or other breach of the peace, or with abetting the same, or with assembling armed men, or taking other unlawful measures with the evident intention of committing the same, is convicted of such offence before a Court of Session, or Magistrate of a division of a District, or a Magistrate of the first class,

and the Court or Magistrate by which or by whom such person is convicted, or the Court or Magistrate by which or by whom the final sentence or order in the case is passed, is of opinion that it is just and necessary to require such person to give a personal recognizance for keeping the peace,

such Court or Magistrate may, in addition to any other order passed in the case, direct that the person so convicted be required to execute a formal engagement, in a sum proportionate to his condition in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding one year if the sentence or order be passed by a Magistrate, or three years if the sentence or final order be passed by a Court of Session, with a provision that if the same be not given the person required to enter into the engagement shall be kept in simple imprisonment for any time not exceeding one year if the order be passed by a Magistrate, or three years if the order be passed by the High Court or by a Court of Session, unless within such period such person execute such formal engagement as aforesaid.

If the accused person be sentenced to imprisonment, the period

for which he may be required to execute a recognizance, and the imprisonment in default of executing such recognizance, shall commence when he is released on the expiration of his sentence.

*Where convicting officer is not in charge of division of district nor a Magistrate of first class.*—When any accused person is convicted of any offence specified in this section by a Magistrate neither in charge of a division of a District nor of the first class, such Magistrate, if he considers it just and necessary to require a personal recognizance for keeping the peace from the person so convicted, shall report the case to the Magistrate of the District, the Magistrate of the division of the District, or to a Magistrate of the first class to whom such Magistrate is subordinate, and the Magistrate to whom the case is so reported shall deal with the case as if the conviction had been before himself.

In any case where the order is not made at the time of signing, or by the Court which signs the judgment, the convict must be produced before the Magistrate who adds the order to enter into a personal recognizance to the original sentence.

**Note.**—The provision, that if the personal recognizance be not entered into, the person convicted shall be kept in imprisonment, is new. So is the provision for cases where the order is not made at the time of signing, or by the court which signs the judgment. See Gobind Sooboodhar, 15 W.R. Crim. 56. The power given to the High Court to demand personal recognizances is also new, and the provision for the time of commencement of imprisonment in default of recognizance given.

The order for the accused to enter into recognizances should be made in his presence. No appeal lies to the Court of Session from such an order of a magistrate.—Reg. v. Bhaskar Kharkar, 3 Bombay H.C. Rep. C.C. 1.

The accused may be bound over at the time of his conviction to keep the peace for one year, from the date of his release from gaol, at the expiration of his sentence.—Reg. v. Dolloi, 6 W.R. 71.

**Sect. 490 (281).** *Security to keep the peace.*—Whenever it appears necessary to require security for keeping the peace, in addition to the personal recognizance of the party so convicted, the Court or Magistrate, empowered to require a personal recognizance, may require security in addition thereto, and may fix the amount of the security-bond to be executed by the surety or sureties; with a pro-

vision that, if the same be not given, the party required to find the security shall be kept in simple imprisonment for any time not exceeding one year if the order be passed by the Magistrate of the District, Magistrate of a division of a District, or by a First Class Magistrate, or three years if the order be passed by the High Court or by a Court of Session.

**Sect. 491 (282).** *Summons to any person to show cause why he should not give bond to keep peace.*—Whenever a Magistrate of a division of a District, or a Magistrate of the first class, receives information that any person is likely to commit a breach of the peace, or to do any act that may probably occasion a breach of the peace, he may summon such person to attend at a time and place mentioned in the summons, to show cause why he should not be required to enter into a bond to keep the peace, with or without sureties, as such Magistrate thinks fit.

*Explanation I.*—A summons calling on a person to show cause why he should not be bound over to keep the peace may be issued on any report or other information which appears credible and which the Magistrate believes ; but the Magistrate cannot bind over a person until he has adjudicated on evidence before him.

*Explanation II.*—A Magistrate may recall a summons issued under this section if he thinks proper.

**Note.**—The words, “or to do any act that may probably occasion a breach of the peace,” have been construed to mean any wrongful act, and not one which a person may lawfully do.—By Couch, C.J., *Kasi Chunder Dass v. Hurkishool Dass*, 19 W.R. Crim. 47.

Before a magistrate acts under this section he must be convinced that there is a reasonable probability, not a bare possibility, that a breach of the peace is about to occur.—*Reg. v. Abdool Hug*, 20 W.R. Crim. 57 ; *Rajah Run Bahadoor Singh v. Rani Tileesswri Koer*, 22 W.R. Crim. 79.

The explanations annexed to this section are new, and by Sect. 282 of the old Code the magistrate was empowered to summon on “credible information.” Under Sect. 282 of the old Code, it was held that the report of a subordinate magistrate (*ex parte* Nellikel Edatthil Itti Pungy Achen, 2 Mad. H.C. Reps. 240), of a police officer (*In re Bindrabirn Shaha*, 10 W.R. Crim. 41), and an information on oath (*ex parte* Tarineekant Lahory Chowdhry, 5 R.C.C. Crim. 5), come under the definition of “credible information.”



But a mere petition, unsupported by oath, which stated that "the Tipperah Rajah's people were intimidating the ryots," was held not to be credible information.—*Chamaro Malo v. Kashi Chunder Lalla*, 5 R.C.C. Crim. 7, and 8 W.R. Crim. 85. So with a statement by a private person not upon oath or affirmation.—*Reg. v. Jevarji Sunji*, 6 Bom. H.C.C.C. 1. But it would appear the change in the section under consideration, from the corresponding section in the old Code, was made with an intention of giving wider discretionary power to the magistrate in issuing a summons on a report or information.

The report of a subordinate magistrate is not evidence on which a conclusion can be properly arrived at that the accused is likely to cause a breach of the peace.—*Reg. v. Irapa bin Basapa*, 8 Bom. H.C. Repts. C.C. 162. Nor is the report of a police officer sufficient ground upon which to found a final adjudication.—*In re Bindrabim Shaha*, 10 W.R. Crim. 41; *Behari Patak v. Mahomet Hyat Khan*, 4 Ben. L.R. 46, F. B.; and *Abhaya Chowdhry v. T. Brae*, 6 Ben. L.R. Appen. 148. And information from another case, though credible information, is not sufficient basis for an order to find sureties to keep the peace.—*In re Brojendro Koomar Rai Chowdhry*, 17 W.R. Crim. 35. The kind of inquiry required to be held by a magistrate in cases under this section is a full judicial inquiry, evidence being taken in the presence of the parties charged, and opportunity given for the cross-examination of witnesses.—*Noor Mahomed v. Nil Ratan Bagchee*, 18 W.R. Crim. 2.

The fact of credible information having been given to the magistrate must appear on the face of his order—*Reg. v. Berishurree Prashad*, 6 W.R. 93; and the evidence on which the order is based must be taken in the presence of the accused and his agent.—*Maghan Misra v. Chamman Tell*, 2 Ben. L.R.A. Cr. J. 7. If a magistrate unempowered demand security to keep the peace his proceedings will be void.—Sect. 34.

**Sect. 492 (283).** *Form of summons.*—Such summons shall set forth the substance of the report or information on which it is issued, the amount of the bond, and the term for which it is to be in force, and, if security is called for, the number of sureties required, and the amount in which they are to be bound respectively, and the time and place at which the person summoned is required to attend.

**Explanation.**—When the parties are present in Court no summons is necessary, but the person to whom a summons would have been issued must have an opportunity to show cause why he should not be bound.

**Note.**—The magistrate must adjudicate on the question whether there is reasonable ground for believing that the defendant is likely to commit a breach of the peace, after taking evidence in the presence of the person charged, and giving him an opportunity of cross-examining the witnesses. The onus lies on the person who has obtained the summons of proving that the defendant is likely to commit a breach of the peace.—*Behari Patak v. Mahomed Hyat Khan*, 4 Ben. L.R. 46, F.B.; *sub nom. Dunul v. Hun Chunder Chowdhry*, 12 W.R. Crim. 60. The magistrate should not order defendant to enter into recognizances without taking evidence whether the defendant had committed any act which might probably occasion a breach of the peace.—*Reg. v. Deo Nundum Singh*, 12 W.R. Crim. 16.

Where the summons, calling upon the parties to show cause why they should not be bound, contained no specification of the amount or nature of the security required, or of the time for which such security was to run, the order passed thereon was set aside by the High Court.—*Reg. v. Gunga Singh*, 20 W.R. Crim. 36. But it has been held that an omission to set forth in the summons the substance of the report or information on which it is issued, unless the party summoned be thereby prejudiced, will not vitiate the order passed thereon.—*Konj Behari Chowdhry*, 15 W.R. Crim. 43.

**Sect. 493 (284). Penalty of bond.**—The bond shall be in the Form (E) given in the second schedule, or to the like effect, and its penalty shall be fixed with a due regard to the circumstances of the case and the means of the party.

The amount in which the sureties shall be bound shall not exceed the penalty named in the bond.

**Note.**—Form E is as follows:—

Whereas I, \_\_\_\_\_, inhabitant of \_\_\_\_\_, have been called upon to enter into a bond to keep the peace for the term of \_\_\_\_\_, I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term; and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of \_\_\_\_\_ Rupees.

Signature.

The High Court will reduce the penalty fixed if the provisions of this section are not regarded.—*Lall Mahomed v. Gibbon*, 22 W.R. Crim. 74. Orders as to bonds to keep the peace are not appealable, but, being judicial proceedings, are liable to revision by the High Court under Sect. 297.

**Sect. 494 (285).** *Warrant of arrest.*—If the person summoned does not attend at the time and place named in the summons on the day appointed, such Magistrate, if satisfied that the summons has been duly served, may issue a warrant for his arrest :

Provided that, whenever it appears to such Magistrate, upon the report of a Police officer or upon other credible information (the substance of which report or information shall be recorded), that there is just reason to fear the commission of a breach of the peace, which may probably be prevented by the immediate arrest of any person, the Magistrate may at any time issue a warrant for his arrest.

**Sect. 495 (286).** *Magistrate may dispense with personal attendance of person informed against.*—The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of the person informed against, under Sect. 491, and may permit him to appear and enter into the required security, or show cause against such requisition, by an agent duly authorized to act in his behalf.

**Note.**—There is no appeal against an order under this section. Sect. 286 (j).

**Sect. 496 (287).** *Discharge of person informed against.*—If on the appearance of such person informed against, or of his agent, if he is permitted to appear by agent, the Magistrate is not satisfied that there is occasion to bind such person to keep the peace, the Magistrate shall direct his discharge.

**Sect. 497 (288).** *Non-compliance with order to give bond.*—If the Magistrate is satisfied that it is necessary for the preservation of the peace to take a bond from such person with or without security, he shall make an order accordingly ; and if such person fails to comply with the order, the Magistrate may order him to be kept in simple imprisonment until he furnish the same.

**Note.**—This section only applies to proceedings under Sect. 491 ; but a similar provision to that found in this section and Sect. 498 is found in the body of Sect. 489. See *Reg. v. Sellam*, 5 Mad. H.C. Reps. 25.

A magistrate can make an order under this section, as well as under Sect. 530, if he considers it required by the circumstances.—*Sutherland v. Crowdy*, 18 W.R. Crim. 2. To warrant an adjudication under this section, there should be a judicial investigation, and the order should be passed upon legal evidence duly taken and recorded.—(*Reg. v. Jivanji Limji* 6 Bom. H.C.R.CC. 1.) Expl. I., Sect. 491.

**Sect. 498** (289). *Time for which person may be bound to keep peace.*—The period for which the Magistrate may bind a person to keep the peace, with or without security, shall not exceed one year.

*Limit of imprisonment under Sect. 497.*—When a person is imprisoned under Sect. 497, he shall not be detained by authority of the Magistrate beyond the term of one year, and shall be released whenever within that term he complies with the order.

**Sect. 499** (290). *Extension of time for which person may be bound.*—Whenever it appears to the Magistrate that it is necessary for the preservation of the peace to bind a person beyond the term of one year, he may, before the expiration of the first year, record his opinion to that effect and the grounds thereof, and may refer the case for the orders of the Court of Session.

Such Court, after examining the proceedings of the Magistrate and making such further inquiry as it thinks necessary, may, if it see cause, authorize the Magistrate to extend the term for a further period not exceeding one year.

If such person fails to give a bond, with security if required, for his keeping the peace for such further period as the Magistrate under the orders of the Court of Session directs, he may be kept in simple imprisonment for such further period, or until within that period he gives such bond.

*Explanation.*—When the subject of dispute, or ground for apprehension, is the same as that on which the first order was passed, the Magistrate must proceed under this section if the first bond is still in force, and not under Sect. 491.

**Note.**—The form of recognizance prescribed under Sect. 491 being perfectly general in form, it is illegal and contrary to the intention of this section for the magistrate who took the first to take a second recognizance before the expiry of the period fixed for the first (*Reg. v. Komodini Kanth Banerji Chowdhry*, 18 W.R. Crim. 44, and 9 B.L.R. App. 30, and *Reg. v. Kalinath Biswas*,

6 B.L.R. Appen. 117); but a magistrate has power to increase the amount of the security required before the expiry of such period (*In re Guru Dass Roy*, 18 W.R. Crim. 57.) The former of the two above cases was decided under the old Code, and the explanation to this section is new. But query whether this case is not still good, though the explanation seems to imply that on a new subject of dispute arising, the magistrate who has taken a recognizance may, before the period fixed has expired, take a second recognizance.

**Sect. 500** (291). *Discharge of recognizances*.—The Magistrate of the District may, if he sees sufficient cause, discharge any recognizance and surety for keeping the peace taken by him or by any Magistrate subordinate to him, or by his predecessor, under the preceding sections, and may order the release of the person confined for default in entering into such recognizance or giving such security.

**Note**.—A magistrate exceeds his jurisdiction if, in discharging the recognizances, he gives directions about property in dispute between the parties in respect of which a breach of the peace was thought likely to arise.—*Chowdhry Sheo Mundun Proshad v. Chowdry Nilkanth Proshad*, 33 W.R. Crim. 44.

It was held under the old Code that, by Sect. 291, a magistrate might cancel an order passed by him under Sect. 482 (Sect. 491 of this Code is the corresponding section). This is now provided for by Expl. II. of Sect. 491.

If a magistrate unempowered discharge recognizances to keep the peace, his proceedings will be void, Sect. 34.

**Sect. 501** (292). *Discharge of sureties*.—A surety for the peaceable conduct of another person may at any time apply to the Magistrate to be relieved from his engagement as surety.

On such application being made, the Magistrate shall issue his summons or warrant in order that the person for whom such surety is bound may appear or be brought before him.

On the appearance of the person to such warrant, or on his voluntary surrender, the Magistrate shall direct the engagement of the surety to be cancelled, and shall call upon such person to give fresh security, and in default thereof shall order him to be kept in simple imprisonment.

**Sect. 502** (293). *Recovery of penalty from principal*.—Whenever it is proved before the Magistrate that any recognizance or other

bond taken under this chapter has been forfeited, he shall record the grounds of such proof, and shall call upon the person bound by such recognizance or bond to pay the penalty thereof, or to show cause why it should not be paid. If sufficient cause be not shown and the penalty be not paid, the Magistrate shall proceed to recover the same by issuing a warrant for the attachment and sale of any of the moveable property belonging to the person bound by such recognizance or bond.

Such warrant may be executed within the jurisdiction of the Magistrate of the District in which it is issued, and it shall authorize the distress and sale of any moveable property belonging to the person bound within the jurisdiction of the said Magistrate, when endorsed by the Magistrate of the District in which such property is situated.

If such penalty be not paid and cannot be recovered by such attachment and sale, such person shall be liable to imprisonment, by order of the magistrate, in the civil jail for a period not exceeding six months.

The penalty shall not be enforced until the person bound has had an opportunity of showing cause and until the breach of the conditions has been proved.

The commission, or attempt to commit or abetment of any offence, whatever and wherever it may be committed, is a breach of the bond.

Proceedings under this chapter may be taken either in the district in which the breach of the peace is apprehended, or where an offence has been committed in breach of the bond, or in any district where the person it is desired to bind may be.

**Note.**—Before a recognizance can be forfeited, it must be proved that the person accused has either personally broken the peace or abetted some other person or persons in breaking it. The mere fact that the accused is a servant of two rival parties for whose benefit the breach took place, is not sufficient.—*Reg. v. Kally Beyrub Sandyal*, 11 W.R. Crim. 52.

A person cannot be bound over until the magistrate has adjudicated on the evidence before him (Sect. 491), and the evidence taken should be recorded in the presence of the accused or an agent of the accused, duly authorized to appear in such inquiry.—*In re Kalikant Roy Chowdhry*, 3 Ben. L.R. Appen. 155, and 12 W.R. Crim. 54.

The proceeding to realize the penalty is of the nature of a civil proceeding, and the person against whom it is held is competent to give evidence on his own behalf.—*In re Jehan Buksh*, 15 W.R. Crim. 87.

The words "wherever it is proved," mean proved by evidence on oath.—*In re Hariram Birbhan*, 11 Bom. H.C.R. 170.

**Sect. 503 (294).** *Recovery of penalty from surety.*—Whenever it is proved before the Magistrate that any bond with a surety has been forfeited, the Magistrate may at his discretion give notice to the surety to pay the penalty to which he has thereby become liable, or to show cause why it should not be paid.

If no sufficient cause is shown, and such penalty is not paid, the Magistrate may proceed to recover payment of the penalty from such surety in the same manner as from the principal party. And in case such penalty cannot be so recovered, the surety shall be liable, by order of such Magistrate, to imprisonment in the civil jail for a period not exceeding six months.

**Note.**—The last paragraph is added under Act xi. of 1874. Before the passing of that Act, it was held that under the Code, as it then stood, sureties could not be imprisoned.—4 Mad. Jurist 429.

In ordinary cases of bail, magistrates cannot mitigate the penalty in a recognizance bond, but are obliged to leave that to the proper department of Government.—Anonymous, 1 Bombay H.C. Rep. 138. Under this section, however, it is in the discretion of the magistrate whether he enforces the bond of the sureties; therefore, it is conceived that although he cannot mitigate, he may forbear altogether to enforce the penalty.

## CHAPTER XXXVIII.

## OF SECURITY FOR GOOD BEHAVIOUR.

**Sect. 504 (295).** *When Magistrate may require security for good behaviour for six months.*—Whenever it appears to the Magistrate of the District, or to a Magistrate of the first class, that any person is lurking within his jurisdiction, or that there is within his jurisdiction a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself, such Magistrate may require such security for such person's good behaviour, for a period not exceeding six months, as to him may appear good and sufficient.

*Binding of sentenced person.*—If in any case under this or the two following sections the person to be bound is under sentence for an offence, he must be brought up on or after the expiration of his sentence for the purpose of being bound.

If a Sessions Judge, or Magistrate of the second or third class, considers, from evidence taken in any proceedings before him, that any person should be required to enter into a bond to be of good behaviour, he may send such person in custody to a competent Magistrate.

*Powers of Magistrate of division of District, being a Magistrate of the second class, to inquire.*—A Magistrate in charge of a division of a District, exercising the powers of a Magistrate of the second class, may make any inquiry necessary under this chapter, and may submit his proceedings to the Magistrate of the District, who may pass such order on them, either directing the person whose character was inquired into to furnish security or not, as he thinks fit.

**Note.**—In fixing the amount of security, the Magistrate should consider the station of life of the person concerned, and should not go beyond a sum for which there is a fair probability of his being



able to find security.—Mad. H.C. Rulings, 26th April 1869, 4 Mad. H.C. Reps. Appen. 46.

Security for good behaviour cannot be required merely on the report of a police officer, as such report is not evidence.—Reg. v. Alum Sheikh, 5 W.R. Crim. 2. A magistrate has no power to use the information which the police may have obtained as evidence in a case against a person called upon to give security for his good behaviour.—Reg. v. Komul Kishen, 11 W.R. Crim. 35.

As to the means of bringing a person before the magistrate for the purposes of this section, see Sect. 94.

An order under this section to furnish security for good behaviour is open to appeal (Sect. 267), unless passed by the magistrate of the district (Sect. 286, *d.*).

If a magistrate unempowered demand security for good behaviour his proceedings will be void, Sect. 34.

Where a conviction for an offence is contemporaneous with an order for taking security for good behaviour, the sentence for the substantive offence is to be first carried out, and the person to be bound then brought up for the purpose of being bound.—R. v. Shona Dagee, 24 W.R. Crim. 13.

**Sect. 505 (296).** *When Magistrate may require security for good behaviour for one year.*—Whenever it appears to such Magistrate, from the evidence as to general character adduced before him, that any person is by repute a robber, house-breaker, or thief, or a receiver of stolen property, knowing the same to have been stolen, or of notoriously bad livelihood, or is a dangerous character, such Magistrate may require similar security for the good behaviour of such person for a period not exceeding one year.

**Note.**—Where a person is charged with being a person of bad character under this section, after having been tried for dacoity, the evidence taken in the trial for dacoity should not be used against the accused with reference to the charge under this section, but the evidence relating thereto should be taken independently.—*In re Rojoru Kant Bhomich*, 13 W.R. Crim. 24.

In an inquiry under this section the defendant should have an opportunity of cross-examining the witnesses produced against him, of making his statement, and of calling witnesses on his own behalf.—Mad. H.C. Rulings, Nov. 3 1868, 4 Mad. H.C. Reps. Appen. 22.

The evidence as to character (bad or good) should be general and not particular, leaving it to the opposite party to elicit particular facts. See case above quoted.

A direction annexed to a sentence that the convict be brought up at the expiration thereof, in order to give security for his good behaviour, is not authorized by this section. The proper course is to summon him to appear when the sentence is expired and then to proceed under this section.—Reg. v. Krishnaji Bapuji Gaikavad, 3 Bom. H.C. Reps. C.C. 39.

An order under this section to furnish security for good behaviour is open to appeal (Sect. 267), unless passed by the magistrate of the district, Sect. 286 (d.). If a magistrate unempowered demand security for good behaviour, his proceedings will be void. Sect. 34.

**Sect. 506** (297). *Procedure where security required for more than one year.*—Whenever it appears to such Magistrate, from the evidence as to general character adduced before him, that any person is by habit a robber, house-breaker, or thief, or a receiver of stolen property, knowing the same to have been stolen, or of a character so desperate and dangerous as to render his release, without security, at the expiration of the limited period of one year hazardous to the community,

he shall record his opinion to that effect, with an order specifying the amount of security which should, in his judgment, be required from such person, as well as the number, character, and class of sureties, and the period, not exceeding three years, for which the sureties should be responsible for such person's good behaviour, and if such person does not comply with the order, the Magistrate shall issue a warrant directing his detention pending the orders of the Court of Session.

**Note.**—When the Court of Session has finally disposed of the case, that court should forward a copy of its order together with a warrant for its execution to the magistrate of the district or other officer in charge of the jail, who should proceed to have such order carried out according to the exigency thereof.—9 W.R. Crim. L. 1.

**Sect. 507** (298). *Proceedings to be laid before Court of Session.*—If a person required to furnish security, under the provisions of the last preceding section, does not furnish the same, or offers sureties whom the Magistrate sees fit to reject, the proceedings shall be laid, as soon as conveniently may be, before the Court of Session.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass orders on the case, either confirming, modifying, or annulling the orders of such Magistrate as it thinks proper.

**Sect. 508 (299).** *Court of Session may require security for period not exceeding three years.*—If the Court of Session does not think it safe to direct the immediate discharge of such person, it shall fix a period for his detention not exceeding three years, in the event of his not giving the security required from him.

**Note.**—There is no appeal against an order passed under this section by a sessions judge, but a proceeding under this section, being a judicial proceeding, is open to revision by the High Court.

**Sect. 509 (300).** *Contents of order for security.*—Whenever security for good behaviour is required by the Court of Session or by a Magistrate, the amount, the security, the number and description of sureties, and the period of time for which the sureties are to be responsible for the good conduct of the person required to furnish security, shall be stated in the order.

The security-bond shall be in the Form (G) given in the second schedule, or to the like effect.

**Sect. 510 (301).** *Imprisonment in default of security.*—In the event of any person required to give security under the provisions of this chapter failing to furnish the security so required, he shall be committed to prison until he furnish the same.

Provided that no such person shall be kept in prison for a longer period than that for which the security has been required from him.

Imprisonment under this section may be rigorous or simple, as the Court or Magistrate in each case directs.

**Note.**—Persons confined for not finding security demanded under this chapter and escaping, or attempting to escape, are punishable under Sect. 225A of the Penal Code. See p. 200.

A magistrate cannot, under this section, sentence a defendant to a definite term of imprisonment in default of finding security, but must send him to gaol until he furnishes such security.—*Mad. H.C. Rulings*, 26th April 1869, 4 *Mad. H.C. Reps. Appen.* 46.

**Sect. 511 (302).** *Release of prisoners under requisition of security.*—The Magistrate of the District may at any time exercise his discretion in releasing, without reference to any other authority, any prisoner confined under requisition of security for good behaviour, whether by his own order or that of his predecessor in office, or by

the order of any officer subordinate to him, provided he is of opinion that such person can be released without hazard to the community.

**Note.**—If a magistrate unempowered discharge a person lawfully bound to be of good behaviour, his proceedings will be void.—Sect. 34.

**Sect. 512 (303).** *Report in case of prisoner under requisition of security by order of Court of Session.*—Whenever the Magistrate of the District is of opinion that any person confined under requisition of security for good behaviour by order of a Court of Session, can be safely released without such security, such Magistrate shall make an immediate report of the case for the orders of such Court of Session.

**Sect. 513 (304).** *Discharge of surety.*—A surety for the good behaviour of a person may at any time apply to a competent Magistrate to be relieved from his engagement as such surety. On such application being made, such Magistrate shall issue his summons or warrant in order that such person may appear or be brought before him.

On the appearance of such person pursuant to such summons or warrant, or on his voluntary surrender, such Magistrate shall direct the engagement of the surety to be cancelled, and shall call upon the person so appearing or surrendering to give fresh security, and, in default thereof, shall commit him to custody.

**Sect. 514 (305).** *Recovery of penalty from sureties.*—Whenever a competent Magistrate is of opinion that, by reason of an offence proved to have been committed by a person for whose good behaviour security has been given, subsequent to his having given such security, proceedings should be had upon the bond executed by the surety, such Magistrate shall give notice to the surety to pay the penalty, or to show cause why it should not be paid.

If such penalty be not paid and no sufficient cause for non-payment be shown, such Magistrate shall proceed to recover the penalty from such surety by issuing a warrant for the attachment and sale of any moveable property belonging to him. Such warrant may be executed within the jurisdiction of the Magistrate of the District in which it is issued, and it shall authorize the distress and sale of any moveable property belonging to such surety, without the jurisdiction of the said Magistrate, when endorsed by the Magistrate of the District in which such property is situated.

If such penalty be not paid, and cannot be recovered by such

attachment and sale, the surety shall be liable to imprisonment by order of such Magistrate in the civil jail for a period not exceeding six months.

**Note.**—The provision in this section for imprisonment of the surety on non-payment and non-recovery of the penalty is not found in Sect. 503.

**Sect. 515 (306, 307).** *Issue of summons and warrant of arrest.*—The provisions of Sects. 492 and 494, relating to the issue of summons and warrant of arrest for securing the personal attendance of the party informed against, when such party is not in custody, shall apply to proceedings taken under this chapter against persons required to give security for their good behaviour.

Proceedings may be taken under this chapter against persons amenable to its provisions, in any district where they may be.

*Manner of taking evidence under Chapter XXXVII. or this chapter.*—Any evidence taken under Chapter XXXVII. or this chapter, shall be taken as in cases usually heard by a Magistrate upon summons.

*Previous convictions may be proved.*—Any previous conviction against the person to be bound may be proved on proceedings held under this chapter.

**Note.**—The provisions of this section, that proceedings may be taken against persons wherever they may be, and that previous convictions against persons to be bound may be proved, are new.

The order of a district magistrate requiring certain persons to enter into recognizances and keep the peace was reversed, as such order appeared to have been made without any legal evidence having been taken and recorded, as required by Sect. 307 of the old Code.—Reg. v. Dalpatram Pemabhai, 5 Bom. H.C. Reps. C.C. 105; and see Reg. v. Nursingh Narain, 10 W.R. Crim. 1. The part of this section relating to the manner of taking evidence is, with some change in the wording, the same as Sect. 307 of the old Code.

**Sect. 516.** *Sureties may be rejected on the ground of character.*—A Magistrate may refuse to accept any surety offered under this chapter on the ground that such surety is an unfit person.

**Sect. 517.** *Chapter not applicable to European British subjects.*—The provisions of this chapter shall not apply to European British subjects.

## CHAPTER XXXIX.

## LOCAL NUISANCES.

**Sect. 518 (62).** *Magistrate may issue orders to prevent obstructions, danger to human life, or riots.*—A Magistrate of the District, or a Magistrate of a division of a District, or any Magistrate specially empowered, may, by a written order, direct any person to abstain from a certain act, or to take certain order with certain property in his possession, or under his management, whenever such Magistrate considers that such direction is likely to prevent, or tends to prevent,

obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, or danger to human life, health, or safety, or a riot or an affray.

*Explanation I.*—This section is intended to provide for cases where a speedy remedy is desirable, and where the delay which would be occasioned by a resort to the procedure contained in Sect. 521 and the next following sections, would, in the opinion of the Magistrate, occasion a greater evil than that suffered by the person upon whom the order was made, or would defeat the intention of this chapter.

*Explanation II.*—An order may in cases of emergency, or in cases where the circumstances do not admit of the serving of notice, be passed *ex parte*, and may in all cases be made upon such information as satisfies the Magistrate.

*Explanation III.*—An order may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

*Explanation IV.*—Any Magistrate may recall or alter any order made under this section by himself or by his predecessor in the same office.

**Note.**—An order of a magistrate under this section is not appealable (Sect. 286), nor is it a judicial proceeding, and so it is not open to revision by the High Court (Sects. 520, 297). In the cases of *Reg. v. Pitti Singh*, 8 W.R. Crim. 37, and *Reg. v. Abbas Ali Chowdhry*, 6 Ben. L.R. 74, it was held that the only way of testing the validity of an order under this section is by refusing to obey it, and then trying the question on a trial for the disobedience. But in the case of *Banee Madhup Ghose v. Wooma Nath Roy Chowdhry*, 21 W.R. Crim. 26, where a judge, in passing an order under this section, acted *ultra vires*, a rule *nisi* was granted and made absolute by the High Court, in exercise of its powers under Sect. 15 of the Charter Act.—*Kali Narain Roy Chowdhri v. Abdool Guffoor Khan*, 22 W.R. Crim. 24. Thus it would appear the powers of revision given by Sect. 297 to the High Courts do not affect their powers of general superintendence under the Charter Act.—*In re Omesh Chunder Majoomdar*, 22 W.R. Crim. 78; *Sree Nath Dutt v. Unnoda Churn Dutt*, 23 W.R. Crim. 34.

The four explanations to this section are new. Under Sect. 62 of the old Code, it was held that a magistrate could not pass a prohibitory order without having previously issued a rule to show cause why the order should not be passed.—*Reg. v. Rai Lachmipat Sing*, 5 Ben. L.R. Appen. 81, and 14 W.R. Crim. 171; and that there was nothing in the section to justify the magistrate in making an order for the removal of a board or other obstruction or nuisance on the mere report of a police constable, and that before making such order the magistrate ought to take evidence from the defendants, and, if necessary, on both sides.—*Reg. v. Bhyroo Dyal Singh*, 11 W.R. Crim. 46, and 3 Ben. L.R.A. Cr. Ju. 4; and see *Radhakishore v. Giridharee Sahee*, 13 W.R. Crim. 19, and *in re Luchmiput Singh*, 14 W.R. Crim. 3. These cases, taken in connection with Explanation II. of the present section under consideration, show that though the magistrate has now power to pass orders *ex parte*, and in all cases on such information as satisfies him, still that in ordinary cases the person affected should have the opportunity of showing cause against the order in question.

In connection with Explanation I. may be noticed the cases of *Uttam Chunder Chatterjee v. Ram Chunder Chatterjee*, 13 W.R. Crim. 72, and *Reg. v. Ram Chandra Mookerjee*, 5 Ben. L.R. 131, decided under Sect. 62 of the old Code. In the latter, it was held

that under the section a magistrate had no power to issue an order to cut down trees on the representation of a party that they were likely to cause his house to be unhealthy; and in the former, the learned judge said: "It is impossible to suppose that the Legislature intended to give to a magistrate summary power to issue, without hearing the party concerned, an order such as that issued in this case, by which a man's property would be greatly injured, and could not be restored to its original condition should it afterwards turn out that the magistrate was wrongly informed, or acting under a wrong impression. We think the magistrate has no power to issue any order which by its very nature is irrevocable. All that he has power to do is to compel the owner of property to take certain order with it. That does not appear to us to extend to an order to cut down a large quantity of trees on the defendant's own land.

Where a case falls partly under this section, and partly under Sect. 521, the magistrate must conform to the more particular directions of the latter section. Under whichever section he acts, the order ought to contain a clear statement of the facts which the magistrate in the exercise of his judicial discretion considers the material facts of the case, and upon the footing of which he made the order.—*In re Harimohun Malo*, 1 Ben. L.R.A. Cr. J. 20.

A magistrate ordered the rival holders of two hauts to abstain from holding their hauts on the same day upon adjacent pieces of ground, as he apprehended a continuance of riots and affrays, and annoyance or injury to persons lawfully employed in them; and it was held that this order came strictly within the terms of this section, and the High Court accordingly refused to interfere with it.—*In re Kalikaperchad*, 11 W.R. Crim. 5, and *sub nom.* *Reg. v. Kalika Prasad*, 5 Ben. L.R. Appen. 82. But it has also been held that a magistrate has not power to direct a person to abstain from holding a haut, on the representation of the holder of a rival haut that injury will be caused to his property, where it appears that such injury feared is simply on account of competition, injury to property simply by competition not being in the contemplation of this section.—*Cal. H.Cr.* 653, 1863. *Sheeb Chunder Buttacharji v. Saadut Ali Khan*, 4 W.R. Crim. 4.

In the later case, however, of *Bykuntram Sheha Roy v. Meajan*, 18 W.R. Crim. 47, referred to a full bench by Kemp and Glover,



J.J., it was held that a magistrate or other officer exercising the powers of a magistrate is legally competent under this section to issue an order prohibiting a landholder from holding a haat on any particular spot on his estate on particular days, on the ground that such an order is likely to prevent a riot or an affray. In delivering judgment, Couch, C.J., said: "The word *certain* placed before the word *Act*, and afterwards repeated twice in the expression 'to take *certain* order with *certain* property in his possession,' leaves no reasonable doubt in our minds that the Legislature intended to give full and ample powers to the magistrate, the chief officer intrusted with the duty of preserving the peace of the district, to restrain any person from doing any act, or to command him to hold any property in his possession subject to any condition, whenever such magistrate shall consider that such a course of procedure is likely to prevent, or even tends to prevent, a riot or an affray."—Followed in *Bholanath Bose v. Komruddin*, 20 W.R. Crim. 53.

The Temple of Pandharpoor, a public temple, is visited at certain periods of the year by a large concourse of pilgrims. With a view to prevent the dangers arising from overcrowding, and to improve the ventilation, the magistrate, by a written order under this section, directed the hereditary priests to widen and lengthen the doorway. On application to the High Court it was held that such an order was legal under this section, and that the case would have been the same had the temple been private property, and also that it would seem that the power of a magistrate to issue orders under this section is entirely discretionary.—*Reg. v. Ramchandra Eknath*, 6 Bom. H.C. Reps. C.C. 36.

A Ghosain went out to pay a visit with retainers blowing horns, in order to annoy a neighbour. It was held that the right order to be made was, that each party should be forbidden to use horns or other musical instruments in the neighbourhood of the other's house for the purpose of giving offence.—*Reg. v. Ram Chunder Seer Ghosain*, 6 W.R. Crim. 40.

It is not necessary that an order issued by a magistrate under this section, whereby a breach of the peace is prevented, should be supplemented by a proceeding under Sect. 521—*Reg. v. Luteef Hossein*, 10 W.R. Crim. 1. *Quære* whether an order to remove and reconstruct roof-drains is legal, unless they cause a *public* nuisance.—*Reg. v. Shabuckram Bukoolee*, 2 W.R. Crim. 32.

The purchaser of an interest in land at a sale in execution of a decree obtained an order under Sect. 263 or 264 of the Civil Procedure Code, and a dispute arose between him and another person who had some interest in the land as to what passed under the sale certificate. Without ascertaining the rights of parties, the magistrate made certain orders the effect of which was to exclude the purchaser from exercising the right alleged to have been purchased by him. It was held that the magistrate ought to have made no order at all with reference to the party, but left it to the parties to determine their rights in a civil suit, and that he had ample power under this section to do otherwise what was necessary to prevent a breach of the peace—*Sheikh Luloo v. Adan Sircar*, 17 W.R. Crim. 37.

A magistrate is not authorized under this section to interfere with the exercise of any of the ordinary rights of a landholder merely because such exercise may require vigilance on the part of the police, and may, in the absence of such vigilance, lead to an affray—*Sheeb Chunder Buttacharjee v. Saadut Ally Khan*, 4 W.R. Crim. 12. Nor can a magistrate under this section issue an order warning owners of cattle to take proper care of their cattle, and providing that, in case of disobedience or neglect, they would be punished.—*In re Amiraddi*, 3 Ben. L.R.A. Cr. J. 45, and *sub nom.* *Amerooddin*, 12 W.R. Crim. 36 and 6 Ben. L.R. 78.

The power of issuing orders to prevent breaches of the peace under this section extends only to immoveable property of the description set forth in Chapter XL, and does not justify a magistrate in interfering with money in the hands of one person to which another lays claim, and in respect of which it is thought likely that a quarrel will take place which may lead to a breach of the peace.—*Reg. v. Gohick Chunder Goocho*, 12 W.R. Crim. 38.

Where a magistrate of the second class passed an order under this section, and the magistrate in appeal held such order void from want of jurisdiction, but passed a similar order himself under this section, the High Court held that the magistrate in appeal acted illegally, and should have proceeded under Sect. 521.—*In re Brindabun Dutt*, 21 W.R. Crim. 24.

An order to prohibit the straying of cattle within certain local limits cannot be made under this section.—*Reg. v. Mozafa Khalifa*, 9 B.L.R. App. 36.

See Sects. 23, 25, 27 and 28 as to what magistrates can act and

be empowered to act under this section. If a magistrate unempowered issue an order to prevent an obstruction, his proceedings will be void. Sect. 34.

Though an order under this section is not a judicial proceeding, yet such order is open to revision by the High Court under its extraordinary powers conferred by Sect. 15 of the Letters Patent.—*Goshain Luchmun Pershad Pooree v. Bhoop Narain Pooree*, 24 W.R. Crim. 31.

**Sect. 519.** *Magistrate may prohibit repetition or continuance of public nuisances.*—A Magistrate of the District, or a Magistrate of a division of a District, or any Magistrate specially empowered, may enjoin any person not to repeat or continue a public nuisance, as defined in Sect. 268 of the Indian Penal Code, or under any Local or Special Law.

**Note.**—The police may arrest, without warrant, on continuance of a public nuisance. The punishment for such an offence is six months' imprisonment, or fine, or both. See schedule hereto, referring to Sect. 291 of the Indian Penal Code.

See Sects. 23, 25, 27 and 28 as to what magistrates can act and can be empowered to act under this section. If a magistrate unempowered prohibit the repetition of a nuisance, his proceedings will be void. Sect. 34.

**Sect. 520.** *Orders not judicial proceedings.*—Orders made under Sects. 518 and 519 are not judicial proceedings.

**Sect. 521 (308).** *Magistrate may order removal of nuisance.*—Whenever the Magistrate of a District, or the Magistrate of a division of a District, or when empowered by the Local Government in this behalf, a Magistrate of the first class, considers that any unlawful obstruction or nuisance should be removed from any thoroughfare or public place, or that any trade or occupation, by reason of its being injurious to the health or comfort of the community, should be suppressed or should be removed to a different place, or that the construction of any building, or the disposal of any combustible substance, as likely to occasion conflagration, should be prevented, or that any building is in such a state of weakness that it is likely to fall, and thereby cause injury to persons passing by, and that its removal in consequence is necessary, or that any tank or well adjacent to any public thoroughfare should be fenced in such a manner as to prevent danger arising to the public—

such Magistrate may issue an order to the person causing such obstruction or nuisance, or carrying on such trade or occupation, or being the owner or in possession of, or having control over, such building, substance, tank, or well as aforesaid, calling on him, within a time to be fixed in the order, to remove such obstruction or nuisance, or to suppress or remove such trade or occupation, or to stop the construction of such building, or to remove it, or to alter the disposal of such substance, or to fence such tank or well, as the case may be, or to appear before himself or some other Magistrate of the first or second class within the time mentioned in the order, and show cause why such order should not be enforced.

*Order to be a judicial proceeding.*—The issue of an order under this section shall be a judicial proceeding, whether or not evidence is taken therein.

*Order to be in the alternative.*—Such order may be issued on a report or other information which the Magistrate believes, and shall direct the person to whom it is addressed either to obey it or to show cause why it should not be obeyed. The order shall not be made absolute, except as is hereinafter provided, until opportunity has been given to the person affected to show cause.

*Explanation.*—A “public place” includes property belonging to the State, camping grounds, and grounds left unoccupied for sanitary and recreative purposes.

*Note.*—The powers of magistrates to make orders under this section are strictly defined in the section itself. Magistrates have no power under this section to make orders generally for the protection of the public health. *In re Shah Soojaut Hossein*, 22 W.R. Crim. 19.

This section and those following refer to public places and nuisances therein, and not to the interior of a dwelling-house. Therefore the jurisdiction of the civil courts is not by these sections barred, to set aside an order of a deputy-magistrate restricting some of the owners and occupiers from the free use of their own portion of the joint-property.—*Eshan Chunder Banerjee v. Nund Coomar Banerjee*, 8 W.R. Cir. 239. *In re Shah Soojaut Hossein*, 22 W.R. Crim. 19.

There is no definition here of the terms unlawful obstruction and nuisance, and for that definition we must resort to the Code of substantive law, and in Sect. 268 of the Penal Code we find the

only definition of these terms which is to be had. There are two sets of cases—illegal acts and omissions which cause common injury, danger or annoyance to the public or the people in general, who dwell or occupy property in the vicinity, and illegal acts or omissions which of necessity must cause injury, obstruction, danger, or annoyance to persons who may have occasion to use a public right. Every unlawful obstruction to persons in the exercise of a public right is a public nuisance. Every nuisance is not, however, an unlawful obstruction, by *Holloway, J., Seshaiyangar v. Ragunatha Row*, 5 Mad. H.C.R. 345, 357. There is a very wide difference between the case of a man who possesses property which it is desirable to remove with a view to the improvement of the health of the locality, or the better convenience of the public, and the case of a man who constructs a building which is proved to be a positive public nuisance. The latter commits and continues a wrong, but not so the former; and however humble may be his social position, he cannot be forced to sacrifice the value of his proprietary interest for what a few other persons may consider to be a public advantage.—*Id.* by Scotland, C.J., p. 352, and see *Ragunda Rau v. Nathamuni*, 6 Mad. H.C.R. 440.

This section applies to cases where the immediate abatement of a nuisance is not absolutely necessary.—*Reg. v. Choonnee Lall*, 2 N.W. Prov. H.C.R. Crim. App. 1.

The order made under this section should be simply for the removal of the nuisance, and should not point out the way in which the nuisance should be removed, but leave that to the discretion of the person on whom the order is made.—*In re Paul Dass*, 10 W.R. Crim. 51.

A magistrate may order a wall to be removed, if that is necessary to prevent obstruction to persons lawfully employed.—*Reg. v. Pitti Singh*, 8 W.R. 37. But he cannot interfere to reopen a private path, leading from the house of a person to a public thoroughfare, as such a path is not a thoroughfare or public place.—*Reg. v. Jankee Nath Bhattacharjee*, 2 W.R. 36. Nor order the removal of an obstruction of a drain into which the sewage of certain premises fell—*In re Troylokhonath Bose*, 5 W.R. 58; and in a case of a dispute before a magistrate as to the right to the use of water which the party complained against had embanked, the magistrate should proceed not under this but under Chapter XL—

Reg. *v.* Madho Churn, 13 W.R. Crim. 51. In the case of a complaint under this section for the removal of an obstruction to a thoroughfare, the magistrate should first inquire whether the road be a public one or not. If he finds in the affirmative, he has jurisdiction to proceed; if in the negative, he should hold his hand.—*In re* Becharam Bhuttercharjee, 15 W.R. Crim. 67.

When a public thoroughfare is obstructed, a magistrate is bound to proceed under this chapter, and not under Sect. 320.—Reg. *v.* Baroda Proshad Mustafee, 5 W.R. 5. A magistrate does not act legally under this section if he does not call upon the person whose property he proposes to interfere with to appear and show cause.—Collector of Hooghly *v.* Tara Nath Mukhopadya, 7 Ben. L.R. 449. Even if the objections of the party who has to show cause are filed after the time fixed for their presentation, provided they are filed before the case is taken up, the magistrate cannot proceed to pass an order for the removal of the nuisance under this section, without hearing them. *In re* Bistoo Chunder Chuckerbutty, 10 W.R. Crim. 27.

A magistrate having once commenced proceedings under this section, cannot afterwards take up the matter summarily under Sect. 518—Reg. *v.* Pitti Singh, 8 W.R. Crim. 37; and when a case falls under both this section and Sect. 518, the order of the magistrate ought to conform to the more particular directions of this section, and not be absolute in the first instance, but give the defendant an opportunity of showing cause against it. Whether the case comes under either or both of these sections, the order ought to contain a clear statement of the facts upon the basis of which the magistrate made the order.—*In re* Harimdhun Malo, 1 Ben. L.R.A. Cr.J. 20, and 10 W.R. Crim. 53.

It is doubtful whether this section is applicable where a private individual charges the public with committing a nuisance in the exercise of an admitted right. In the case of *Becharam Ghoroe v. Boistabnath Bhoorjan*, 14 W.R. Cr. 177, it was held that it is not competent for a magistrate, on the complaint of a private individual, to prohibit the public from using a certain place as a burning ghaut to which they have an admitted right; but in the case of the *Mun. Coms. of Calcutta v. Mahomed Ali*, 7 Ben. L.R. 499, and 16 W.R. Crim. 6, where the condition and conduct of an old established slaughter-house were proved to constitute in fact an

offensive nuisance; the evidence not showing, however, that it was in a worse condition than at any previous time since its establishment, the magistrate was held by the High Court justified in suppressing the trade or occupation under this section,—no length of enjoyment legalizing a public nuisance.

When a magistrate, under this section, after cause shown, has ordered the suppression of a trade or occupation as a nuisance, and injurious to the health of a neighbourhood, the High Court will not interfere unless they find either that there was no reasonable evidence before the magistrate that the trade was injurious to the health and comfort of the community, or that the cause shown was such as ought to have satisfied the magistrate that his order for suppressing the trade was not reasonable and proper. The court take the findings of fact by the magistrate to be correct, unless they see that there is no evidence on the record to warrant such findings.—*Mun. Coms. of Calcutta v. Amanat Ali*, 7 Ben. L.R. 516.

No suit will lie in a civil court to set aside an order duly made by a magistrate under this section, or to restrain him from carrying it into effect.—*Ujalamayi Dasi v. Chandra Kumar Neogi*, 4 Ben. L.R. 24; *F.B. Collector of Hooghly v. Tara Nath Mukhophya*, 7 Ben. L.R. 449; and *Bakas Ram Sahoo v. Chummun Ram*, 7 W.R. Civ. 11. But a suit will lie in a civil court by a plaintiff to prove that lands which a magistrate has decided to be public property are the plaintiff's private property.—*Lalji Ukheda v. Jowba Dowba*, 8 Bom. H.C. Reps. 94.

In a case which came before the High Court of Bombay as a Court of Review, the acting magistrate of a district had issued an order under this section, calling upon the petitioner to remove a building on the ground that it was an unlawful obstruction upon a high-road. A jury of five persons was appointed by the magistrate's successor, under Sect. 523, to report within fifteen days whether the order was reasonable and proper. The jurors, being without instructions, took different views as to the performance of their duties; but four of them visited the premises and were unanimous in finding that the building complained of was not on a high-road at all. Five days after receiving four separate reports to this effect, the magistrate issued another order to the petitioner requiring him to pull down his house within fifteen days, as the jurors had not made a report within the time prescribed. The

petitioner showed cause under Sect. 527, but without effect, and the order was repeated. The Sessions Judge meanwhile, upon the application of the petitioner, called for the proceedings under Sect. 295, but the magistrate wrote questioning the judge's authority to interfere, and without waiting for a reply, proceeded to try the petitioner for disobedience to an order duly promulgated by a public servant, and sentenced him to twenty-five days imprisonment under Sect. 188 of the Penal Code, *ante*, p. 86. His house was also pulled down. The proceedings were ultimately forwarded to the Sessions Judge, whose successor in office returned them, with the remark that nothing appeared to have been done contrary to the law for the removal of nuisances. On appeal to the High Court, it was held (reversing the conviction) that the magistrate ought at once to have complied with the precept of the Sessions Judge under Sect. 295, and that he was not warranted in convicting and imprisoning the petitioner for disobeying an order, the legality of which was then properly under the consideration of an Appellate Court. It was also held that the petitioner had shown sufficient cause to satisfy the magistrate under Sect. 527, that the order to pull down the house was "not reasonable and proper."—*Reg. v. Dalsukram Haribhai*, 2 Bombay H.C. Rep. 407. The judgment in this case is worthy of a careful perusal, as laying down the principles which ought to guide magistrates in their decisions under this chapter; and the following extract is therefore inserted here: "The framers of Chapter XXXIX. of the Code of Criminal Procedure evidently contemplated that considerations of justice and equity should form the rule of a magistrate's conduct in dealing with alleged nuisances or unlawful obstructions. Unhappily no provision has been made in the Code for compelling the attendance of the jurors or for securing the correct performance by them of the functions entrusted to them, and thus important rights of property are left in a measure dependent on the caprice and activity, or inactivity, of private persons. The Legislature apparently relied on the sense of justice and discretion of the district magistrate to remedy any failure of duty on the part of the jury, either by an extension of the time fixed for their decision or by a further consideration of the subject. This case, however, affords an illustration of how feeble a safeguard the discretion of a magistrate may be, and demonstrates the necessity of an amendment of the law in that



particular at least. We conceive that any magistrate who possessed conscience or discretion should, with the information before him that was before Mr R. and Mr S., have shrunk from adopting the violent course of pulling down a house stated to have been valuable, which had been reported by persons nominated by themselves not to be any encroachment upon a high-road, and to have been built upon the petitioner's own ground; and we also think no magistrate ought under the circumstances to have proceeded to enforce such an order in the manner that Mr S. has done, and to have sentenced the owner of the house to almost the maximum of punishment which the Penal Code allows him to inflict for disobedience to an order duly promulgated by a public servant lawfully empowered to make such order. We regret to feel ourselves obliged to characterise the conduct of Mr R. and Mr S. as inconsiderate and oppressive. Had either of these magistrates reflected, as he should have done, he would have found abundance of reason to lead him to think that, in the words of Sect. 313 of the Code of Criminal Procedure, it would not be 'reasonable and proper' to carry out the original order. We regret, too, that we must further refer to the tone which appears to pervade Mr S.'s explanation to this court, wherein with the knowledge of all these facts he calls upon this court to treat the petitioner's allegations of complaint as 'worthless and groundless.' The exercise of these summary powers requires both experience and discretion in a magistrate, and a careful consideration of the rights of property."

As to what magistrates can act, and be empowered to act, under this section, see Sects. 27 and 28. If a magistrate unempowered make an order in a local nuisance case, his proceedings will be void.—Sect. 34.

**Sect. 522** (309). *Service or notification of order.*—The order mentioned in Sect. 521 shall, if practicable, be served personally on the person to whom it is issued.

But if personal service is found to be impracticable, such order shall be notified by proclamation, and a written notice thereof shall be stuck up at such place or places as may be best adapted for conveying the information to such person.

**Sect. 523** (310). *Person ordered shall obey or may claim a jury.*—The person to whom such order is issued shall be bound, within the time specified in the order, to obey the same, or to appear before

the Magistrate before whom he was required by the order to appear, and show cause as aforesaid, or he may apply to such Magistrate for an order for a jury to be appointed to try whether such order is reasonable and proper.

*Constitution of jury.*—On receiving such application, such Magistrate shall forthwith appoint a jury, consisting of an uneven number of persons, not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant.

*Suspension of order.*—The execution of the order shall be suspended pending such inquiry, and the Magistrate who issued the order or before whom the applicant appears shall be guided by the decision of the jury, which shall be according to the opinion of the majority.

*When order may be made absolute.*—If the applicant by neglect or otherwise prevents, or if he does not claim, the appointment of a jury, or if from any cause the jury so appointed do not decide and report within a reasonable time, the Magistrate may pass such order as he thinks proper, which order shall be carried out in the manner hereinafter provided.

*Report of jury and order thereon.*—The time within which the report is to be made shall be fixed by the Magistrate in the order for the appointment of the jury, and may from time to time be extended by him. When the jury have made their report, the order of the Magistrate must be founded thereon, except in cases falling under Sect. 528.

*Nota.*—A magistrate cannot receive and enforce the award of a jury delivered long after the day fixed for the purpose.—Reg. v. Hargabind Pal, 7 Ben. L.R. Appen. 37, and 16 W.R. Crim. 23. In the same case it was held that where only the foreman was appointed by the magistrate and the rest of the jury by the parties, the jury was not properly constituted; and in the case of Rajah Shatyammdo Ghosal v. Camperdown Press Coy. (21 W.R. Crim. 43), where the magistrate, instead of himself nominating part of the jury, wrote to the opponents of the applicant for a jury, desiring them to suggest the names of two persons to sit, and the opponents thereon nominated two jurymen: the High Court, under Sect. 297, set aside the order of the magistrate appointing to the jury the two persons nominated by the opponents, on the ground of

material error in the magistrate's not nominating them of his own independent discretion. The court stated, however, that they should not have given this benefit of a technical objection if it had not been that the finding of the jury was against the evidence. When a jury has been appointed under this section the magistrate is bound by their decision, and is not at liberty to act upon one part of their finding and to reject the remainder.—*Reg. v. Poholee Mulliek*, 12 W.R. Crim. 28; *Nyan v. Sher Ali*, 22 W.R. Crim. 86.

When from any cause there is any change in the constitution of the jury appointed, the magistrate must fix a fresh term within which the award is to be sent in; for if this be not done, the magistrate is unable to decide the case himself in the event of delay in the submission of the report of the jury, the fixing of such time being a condition precedent to his deciding the case himself.—*In re Shama Kant Bundopadhya*, 14 W.R. Crim. 69.

Where a jury appointed under this section gave, in regular course, their opinion to the foreman, but the foreman delayed making the report to the magistrate in a reasonable time, whereon the magistrate appointed a second jury to consider the matter afresh, it was held that he acted irregularly in appointing the second jury; and that though he had power, on the report from the jury not being made in a reasonable time, to pass an order in his own discretion, he, not having made such an order, was bound to be guided by the report of the first jury, and his order passed on the report of the second jury was quashed.—*Sheikh Nozumuddy v. Hasim Khan*, 21 W.R. Crim. 54.

**Sect. 524.** *Attendance of jury.*—Such Magistrate may summon so many jurors as may be necessary, and such persons shall be bound to attend and make their inquiry and report.

Any juror failing to attend or neglecting his duty as a juror shall be liable to be dealt with under Sect. 174 of the Indian Penal Code.

**Note.**—Sanction or complaint of the public servant concerned, or his official superior, is necessary to legalise proceedings against a juror under this section.—See Sects. 467, 470, and 473.

For Sect. 174 of the Penal Code, see p. 144.

**Sect. 525 (311).** *Procedure in case of disobedience or neglect by person ordered.*—If the person to whom the order mentioned in Sect. 521 is issued appears to show cause against the same as herein-

after provided, the Magistrate shall take evidence in the matter, but if he does not appear or does not obey the order, or apply for a jury within the time specified in such order,

he shall be liable to the penalty prescribed in that behalf in Sect. 188 of the Indian Penal Code ;

and the Magistrate who issued such order may proceed to carry it into execution at the expense of such person, and may realise such expenses, either by the sale of any building, goods, or other property removed by his order, or by the distress and sale of such moveable property of such person within or without his jurisdiction. If such property is without his jurisdiction, the order shall authorize its attachment and sale when endorsed by the Magistrate in whose jurisdiction the goods are attached.

No suit shall lie in respect of anything necessarily or reasonably done in carrying out the provisions of this section.

**Note.**—The last clause that “no suit shall lie,” etc., though it prevents the civil courts from entertaining a suit to restrain a magistrate from carrying out an order under Sect. 521, or any other person in carrying out such order in the manner provided by law, does not bar a person against whom such an order has been carried into effect from instituting a suit to prove that land, declared by the magistrate to be public, is his private property.—*Lalji Ukheda v. Jowba Dowba*, 8 Bom. H.C. Repts. A.Cr. J. 94.

For Sect. 188 of the Indian Penal Code, see p. 157.

**Sect. 526** (312). *Procedure where jury finds Magistrate's order to be reasonable.*—If in a case referred to a jury, the jury find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate who issued the order or before whom cause was shown shall give notice of such finding to the person to whom the order was issued, and shall add to such notice an order to obey the aforesaid order within a time to be fixed in the notice, and an intimation that, in case of disobedience, such person will be liable to the penalty provided by Sect. 188 of the Indian Penal Code.

If such latter order is not obeyed, the Magistrate may proceed as in Sect. 525.

**Note.**—For Sect. 188 of the Indian Penal Code, see p. 157.

**Sect. 527** (313). *Procedure where person ordered satisfies Magistrate that order is not reasonable.*—If the person to whom the order

of the Magistrate under Sect. 521 is issued appears and shows cause against it so as to satisfy the Magistrate who issued it that it is not reasonable and proper, no further proceedings shall be taken in the case.

**Sect. 528.** *Injunction pending inquiry by jury.*—If the Magistrate who issued the order considers that immediate measures are necessary to be taken to prevent imminent danger or injury of a serious kind to the public, he may issue such an injunction to the person to whom the order under Sect. 521 was issued, as is required to obviate or prevent such danger or injury, whether a jury is to be or has been appointed or not.

In default of such person forthwith taking all necessary measures ordered to be taken by such injunction, the Magistrate may himself use or cause to be used such means as may be necessary to obviate such danger or to prevent such injury.

No suit shall lie in respect of anything necessarily or reasonably done for that purpose.

**Sect. 529** (315). *Saving of certain statutory provisions.*—Nothing in this chapter shall interfere with the provisions of Sect. 48 of Act No. XXIV. of 1859 (*for the better regulation of the Police within the territories subject to the Presidency of Fort St George*), or of Sect. 34 of Act No. V. of 1861 (*for the regulation of Police*), or of Sect. 16 of Act No. VIII. of 1867 (*for the regulation of the District Police in the Presidency of Bombay*), of the Governor of Bombay in Council.

**Note.**—Sect. 48 of Act xxiv. of 1859, and Sect. 34 of Act v. of 1861 are substantially the same. Sect. 34 of Act v. of 1861 is to the following effect :—*Duties of Police Officers in Cases of Obstructions, &c.*—Any person who, on any road, or in any street or thoroughfare within the limits of any town to which this section shall be specially extended by the local government, commits any of the following offences, to the obstruction, inconvenience, annoyance, risk, danger, or damage of the residents and passengers, shall, on conviction before a magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment not exceeding eight days; and it shall be lawful for any police officer to take into custody, without a warrant, any person who within his view commits any of such offences, namely :—

*First. Slaughtering Cattle, &c.*—Any person who slaughters any

cattle or cleans any carcass ; any person who rides or drives any cattle recklessly or furiously, or trains or breaks any horse or other cattle.

*Second. Cruelty to Animals.*—Any person who wantonly or cruelly beats, abuses, or tortures any animal.

*Third. Obstructing Passengers.*—Any person who keeps any cattle, or conveyance of any kind, standing longer than is required for loading or unloading, or for taking up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public.

*Fourth. Exposing Goods for Sale on Roads.*—Any person who exposes any goods for sale.

*Fifth. Throwing Dirt into Street.*—Any person who throws or lays down any dirt, filth, rubbish, or any stones or building materials ; or who constructs any cowshed, stable, or the like, or who causes any offensive matter to run from any house, factory, dung-heap, or the like.

*Sixth. Being found Drunk.*—Any person who is found drunk or riotous, or who is incapable of taking care of himself.

*Seventh. Indecent Exposure.*—Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits a nuisance by easing himself, or by bathing or washing in any tank or reservoir, not being a place set apart for that purpose.

*Eighth. Neglect to protect Dangerous Places.*—Any person who neglects to fence in, or duly to protect any well, tank, or other dangerous place or structure.

Sect. 16 of the above-mentioned Act viii. of 1867 is to the following effect :—The police patel when, and as long as he shall be empowered under Sect. 15, clause 1, shall also have authority to punish by a fine not exceeding one rupee, or, in default of payment, by confinement in the village chowry, for a period not exceeding twelve hours, any person committing any of the nuisances or disorderly acts below described, and to forbid the continuance or repetition of such nuisances or acts ; that is to say :—

1. Any person who wantonly or cruelly beats, ill uses, or tortures any animal.

2. Any person who bathes or washes in or otherwise defiles, or causes to be defiled, any public well, tank, or reservoir, so as to render it less fit for any purpose for which it is set apart.

3. Any person who deposits in forbidden places any dirt, filth, or rubbish.

4. Any person who, on any public street, passage, or thoroughfare, commits nuisance by easing himself, or who is, from intoxication, riotous, disorderly, or incapable of taking care of himself.

5. Any person who, without sufficient cause, wilfully allows to accumulate any offensive matter in cesspools, dung-heaps, or the like, so as to cause annoyance to the neighbouring residents, or to passengers, or who, without sufficient cause, wilfully allows any offensive matter to issue on to any public thoroughfare from any house, factory, stable, privy, or the like, or who deposits the bodies of dead animals, or refuse, or filth of any description either in channels which, in the rainy season, feed any tank or reservoir set apart for drinking, or in other places where to deposit such is offensive to the community.

Sect. 15, clause 1, above referred to is to the effect that :—

It shall be lawful for a commissioner of police, by an order in writing, to authorize any magistrate of a district to issue a commission to any person exercising the office of a police patel, empowering such police patel to try any person charged with any of the following offences committed within the limits of the village of which he is police patel: that is to say—mischief or petty theft, when the estimated value of the property stolen, or of damage sustained, does not exceed two rupees; resistance or refusal to obey a lawful order issued by such police patel personally.

## CHAPTER XL.

## POSSESSION.

**Sect. 530 (318).** *Magistrate how to proceed if any dispute concerning land, &c., is likely to cause breach of the peace.*—Whenever the Magistrate of the District, or a Magistrate of a division of a District, or Magistrate of the first class, is satisfied that a dispute, likely to induce a breach of the peace, exists concerning any land, or the boundaries of any land, or concerning any houses, water, fisheries, crops or other produce of land, within the limits of his jurisdiction,

such Magistrate shall record a proceeding stating the grounds of his being so satisfied, and shall call on all parties concerned in such dispute to attend his Court in person, or by agent, within a time to be fixed by such Magistrate, and to give in a written statement of their respective claims, as respects the fact of actual possession of the subject of dispute.

*Party in possession to be continued until ousted by due course of law.*—Such Magistrate shall, without reference to the merits of the claims of any party to a right of possession, proceed to inquire and decide which party is in possession of the subject of dispute.

After satisfying himself upon that point, he shall issue an order declaring the party or parties to be entitled to retain possession until ousted by due course of law, and forbidding all disturbance of possession until such time.

*Explanation.*—Such Magistrate may satisfy himself of the existence of a dispute likely to induce a breach of the peace from a report or other information, but the question of possession must be decided on evidence taken before him.

**Note.**—In the case of *Sutherland v. Crowdy* (18 W.R. Crim. 10,



and *sub nom. in re* F. D. Sutherland, 9 B.L.R. 229), it was held by Couch, C.J., that by actual possession is meant, not possession by putting up a tent upon the land, nor mere bodily possession, but the possession of a master by his servant, or the possession of a landlord by his immediate tenant—*i.e.*, the person who pays rent to him (not, as in the case then under consideration, the possession of a superior landlord to whom the occupier of the land did not pay his rent), or the possession of the person who has the property in the land by the usufructuary. In a ruling of the High Court, Madras (4 Mad. H.C. Reps. Rulings, 15th May 1869, App. 49), doubt was expressed whether constructive possession by tenants would be such a possession as is by this section contemplated.

Proof must be given of possession at the time proceedings are instituted, not at the time when a decision is come to by the magistrate.—*Mal Pirthiram Chowdry Rai Bahadoor*, 20 W.R. Crim. 51. This case (as reported) might have been met by Sect. 534.

Where the possession of a considerable area is in dispute, the inquiry must be directed to finding who are in possession of the constituent parts, *pilel* by *pilel*.—*Mudhoorooden Shaha v. Bejoy Gobind Chowdhry*, 21 W.R. Crim. 5.

In the case of *Bejoy Nath Chatterji v. The Bengal Coal Company (Limited)*, 23 W.R. Crim. 45, it was held that “when a party claims, under a document or agreement, the right of doing certain things over a large extent of territory, the performance of acts under such alleged right in one portion of the ground over which the right extends, although it may be good and sufficient for the purpose of keeping alive that right so as to be an answer to the plea of limitation raised in a civil suit, is not of itself a sufficient possession on which the magistrate’s order under Sect. 530 may be based for the purpose of forbidding in a distant locality acts not necessarily in conflict with such possession though at variance with the right.”

Where, under this section, an order was made between A on the one side, and B and the then tenants of B on the other, declaring that A was in possession of the property in dispute, it was held that this order was only binding on the actual parties to the case before the magistrate, and that subsequent tenants of B could not be criminally punished for disobeying the order in question.—*In re Gopel Burnawar*, 3 Ben. L.R.A. Cr. J. 13.

A magistrate cannot proceed under this section in a case of dis-

pute arising out of the undetermined right of succession to a *muth* and its appurtenances, but should apply to the judge under Act xix. of 1841 to appoint a curator, or make some order with regard to the property till the right of succession is determined.—*Reg. v. Sriput Giri Gossain*, 11 W.R. Crim. 23.

When there is no dispute as to the actual possession of land or crops, but only one as to the right to them, the magistrate cannot act under this section, but must refer the parties to a civil suit.—4 Mad. H.C. Reps. Ruling, July 13, 1868, App. 12. Possession is all that has to be inquired into, not how the possession was obtained.—*Jamasji v. Fell*, 6 Bom. H.C. Reps. C.C. 30; *in re Mussamut Iman Bandee*, 7 W.R. Crim. 26; *Baprosji Jagjiva v. Mag. of Kheda*, 4 Bom. H.C. Reps. A. Cr. J. 153; *in re Sreeputtee Roy*, 17 W.R. Crim. 59. See, however, Sect. 534, under which in certain cases the court has power to restore possession of immoveable property. This section (530) does not refer to disputes as to the right to collect the rents of a joint undivided estate in a certain proportion; it only refers to disputes concerning land.—*Ram-rungini Dassi v. Gurndas Roi*, 18 W.R. Crim. 36.

In proceedings under this section the magistrate should not hold a lengthy and protracted investigation, but should make a summary and speedy inquiry into the facts of possession, and pass with as little delay as possible an order declaring the party whom he finds in possession entitled to retain it until ousted by due course of law.—*Reg. v. Bullab Karil Buttacharjee*, 11 W.R. Crim. 36. Notice need not be served on all the co-sharers in an estate in view of an order under this section. Only those concerned in the dispute which is likely to cause a breach are entitled to notice.—*Gobind Chunder Ghose v. Ananda Chunder Sircar*, 18 W.R. 54.

The magistrate must record a proceeding, stating the grounds of his being satisfied that a breach of the peace is likely to arise.—Ruling of Mad. H.C., May 15, 1869, 4 Mad. H.C. Reps. Appen. 49; *in re Kishori Mohan Roy*, 19 W.R. Crim. 10; *in re Dewan Elahee Newaz Khan*, 5 W.R. 14; *Kasha Kishor Roy v. Tarini Kant Lahori*, 3 Ben. L.R.A. Cr. J. 76; *in re Emambandee Begum*, 17 W.R. Crim. 53. But where a proceeding is not recorded, the omission may be covered by Sect. 283.—*Gour Mohun Maji v. Doollub Maji*, 22 W.R. Crim. 81.

The evidence of witnesses in proceedings under this section must

be taken down in writing, in accordance with the provisions of Sect. 334, and where this is not done the High Court will set aside the magistrate's order made.—*Khetter Monee Dassee v. Sreenath Sircar*, 11 B.L.R. 5.

Where a plaintiff in a civil suit, brought for confirmation of his possession by a declaration of his title to certain lands, obtained, pending his suit, an order from the magistrate under this section that he should be maintained in possession until ousted by due course of law, and the suit was dismissed, plaintiff failing to prove his title, and the defendants then applied to the High Court under Sect. 297 to set aside the magistrate's order and put them in possession, it was held that their proper course was by a suit in the civil court for possession, and the application under Sect. 297 was rejected.—*In re Juggesh Prakash Ganguli*, 3 Ben. L.R.A.C.J. 57.

Though there is no regular appeal against orders under this section, yet the proceedings being judicial proceedings (Sect. 4), such orders are subject to revision by the High Court under Sect. 297. An inquiry under this section must be a personal one before the magistrate who makes the order; and it is not sufficient for a subordinate magistrate to make the inquiry and report the result of it to the joint magistrate, and thereupon for the joint magistrate to pass an order.—Ruling, November 13, 1868, Mad. H.C. Reps. Appen. 20.

A magistrate under this section is not competent to interfere with the execution of a decree of a civil court. When a civil court has passed a decree regarding the whole or any part of disputed land, it is the magistrate's duty to maintain that decree, and he cannot again institute proceedings in respect of the land covered by it.—*Rai Mohun Roy v. Wise*, 16 W.R. Crim. 24. In *Koomar Poresh Narain Roy v. Watson & Co.* (17 W.R. Crim. 3), which was an application to the High Court of Calcutta to set aside an order made under this section, it was ruled that there was misconception of the aim and object of the law, as well as waste of time to the court and of money to the parties where such applications were made as to questions of title to land, which could only be settled in a civil court.

There is nothing to prevent a magistrate making an order under this section as well as under Sect. 497, if he consider both required by the circumstances.—*Sutherland v. Crowdy*, 18 W.R. Crim. 11.

When a magistrate has taken any evidence, he is not justified in refusing to proceed with the case, or to consider the evidence already taken, because the parties to the inquiry neglected to file written statements on the day fixed for such filing.—*In re Goluck Chunder Mytee*, 11 W.R. Crim. 9.

Two investigations were before the magistrate under this section, and the magistrate, after deciding one of the cases, remarked on the other that, as the land adjoined, he had taken the evidence in the two cases together, and found it unnecessary to continue the inquiry further. It was held that the parties kept out of possession were entitled to a full inquiry in each case.—*Watson v. Ranee Surnomoyee*, 8 W.R. Crim. 63.

A police report is sufficient information for a magistrate to take action under this section.—*Reg. v. Ram Chunder Roy*, 21 W.R. Crim. 28.

Where a magistrate found that an order of his predecessor, made two years previously under this section, as to possession of land, had not been complied with, and the magistrate enforced the order, and changed the possession of the land, it was held that he should not have interfered with the possession, whether or not in accordance with the order of his predecessor.—*Reg. v. Protap Chandra Barooah*, 21 W.R. Crim. 2.

A decree, it would appear, must not, under this section, be for a partial possession; it must be for exclusive possession or none at all.—*Pyari Lal v. Rooke*, 3 B.L.R.A.C.J. 305. If a magistrate unempowered make an order in a possession case his proceedings will be void.—Sect. 34.

**Sect. 531** (319). *If previous possession cannot be ascertained, Magistrate may attach subject of dispute.*—If such Magistrate decides that neither of the parties is in possession, or is unable to satisfy himself as to which person is in possession of the subject of dispute, he may attach it until a competent Civil Court shall have determined the rights of the parties or who ought to be in possession.

**Note.**—A certificate under Act xxvii. of 1860 is in no way a determination of a competent civil court of the right of the person to whom it is granted to possession of land under attachment under this section.—*in re Abilashery Debia*, 9 W.R. Crim. 18; nor does it give a right to possession if obtained after attachment, but the

attachment remains in force until the right of possession has been definitely settled by a civil court.—*Kristo Chunder Mahata v. Mussamut Abinessuree Debia*, 11 W.R. Civ. 532.

The power of attaching land extends to land of which rival zemindars are in possession by their respective ryots.—*In re Maseyk*, 15 W.R. Crim. 1.

It appears that a magistrate may have land attached under this section.—*In re Greesh Chunder Doss*, 17 W.R. Crim. 38.

If the magistrate, having attached property under this section, find that a third person who had no notice of the inquiry under Sect. 530, was in actual possession of the property in question, the magistrate should withdraw his order of attachment, otherwise it is obvious such orders might be obtained to the prejudice of the party in possession; as in a sham dispute between any two parties, the magistrate might, if they failed to offer any evidence, proceed to attach the property—*In re Joykissen Mookerjee*, 24 W.R. Crim. 40.

**Sect. 532 (320).** *Disputes concerning right of use of land or water.*—If a dispute arise concerning the right of use of any land or water, or any right of way, such Magistrate within whose jurisdiction the subject of dispute lies, may inquire into the matter; and if it appears to him that the subject of dispute is open to the use of the public, or of any person or of any class of persons, such Magistrate may order that possession thereof shall not be taken or retained by any one to the exclusion of the public, or of such person, or of such class of persons, as the case may be, until the person claiming such possession shall obtain the decision of a competent Civil Court adjudging him to be entitled to such exclusive possession.

Provided that such Magistrate shall not pass any such order if the matter be such that the right of use is capable of being exercised at all times of the year, unless such right has been ordinarily exercised within three months from the date of the institution of the inquiry, or, in cases where the right of use exists at particular seasons, unless such right has been exercised during the last of such seasons before the complaint.

**Note.**—A right of way is a right of use of land within this section.—*Ruling*, June 1, 1868, 4 Mad. H.C. Reps. Appen. 11, and 3 Mad. Jur. 403.

A magistrate has a discretion whether he will interfere under this section in a case of dispute, and the complainant must, in all instances, make out a sufficient case for the interference of the magistrate.—*In re* Rusool Nushyo, 11 W.R. Crim. 3; but see *contra*, Bhoiao Mundul, 14 W.R. Crim. 28. The magistrate's orders are subject to the decision of a civil court. See case first above cited, and Mohesh Chunder Mookerjee *v.* Ramoottam Palit, 14 W.R. Crim. 163.

When land is taken by Government under Act vi. of 1857, the land is absolutely vested in Government under Sect. 18, freed from any right of way previously enjoyed by the public over such land.—*In re* H.B. Fenwick, 6 Ben. L.R. Appen. 47, and 14 W.R. Crim. 72.

The jurisdiction given by this section to decide for a time the right to enjoyment of property should not be exercised except upon clear and satisfactory proof. Where the only evidence is that of user, it should be such as to show satisfactorily acts of enjoyment exercised as a matter of right, and permitted uninterruptedly for some considerable length of time.—Ruling, January 4, 1869, 4 Mad. H.C. Reps. Appen. 26.

There is nothing in this section which makes it imperative that there should be an impending breach of the peace, before a magistrate can interfere to decide a right of way.—Toyluckhyonauth Sircar, 2 W.R. Crim. 64.

**Sect. 533.** *Local inquiry to determine boundary dispute.*—Whenever a local inquiry is necessary for the purposes of this chapter, any Magistrate of the first class may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such instructions, consistent with the law for the time being in force, as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

**Note.**—When an inquiry is instituted under this section it becomes part of the proceedings in the case. In the case of *Mir Dhunoo v. Thomas Brown* (21 W.R. Crim. 25), where such an inquiry was made, but the result was not communicated to the accused affected by it, the High Court set aside the order made by the magistrate, and remitted the case back that the accused might have the opportunity of learning the contents of the report, of

cross-examining on it, and if necessary, rebutting any material statement therein contained.

**Sect. 534.** *Power to restore possession of immoveable property.*—Whenever in any Criminal Court a person is convicted of an offence attended with criminal force, and it appears to such Court that by such criminal force any person has been dispossessed of any immoveable property the Court may order such person to be restored to possession.

No such order shall prejudice any right over such immoveable property which any person may be able to show in a civil suit.

**Sect. 535** (321). *Saving of powers of Collectors and Revenue Courts.*—Nothing in this chapter shall affect the powers of a Collector or a person exercising the powers of a Collector or of a Revenue Court.

## CHAPTER XLI.

## OF THE MAINTENANCE OF WIVES AND FAMILIES.

**Sect. 536 (316).** *Order for maintenance of wives and children.*—If any person having sufficient means, neglects or refuses to maintain his wife or legitimate or illegitimate child unable to maintain himself, the Magistrate of the District or a Magistrate of a division of a District, or a Magistrate of the first class, may, upon due proof thereof, by evidence, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty Rupees in the whole, as to such Magistrate seems reasonable. Such allowance shall be payable from the date of the order.

*Enforcement of order.*—If such person wilfully neglects to comply with this order, such Magistrate may, for every breach of the order, by warrant, direct the amount due to be levied in the manner provided for levying fines; and may order such person to be imprisoned, with or without hard labour, for any term not exceeding one month for each month's allowance remaining unpaid:

Provided that, if such person offers to maintain his wife on condition of her living with him, and his wife refuses to live with him, such Magistrate may consider any grounds of refusal stated by such wife; and may make the order allowed by this section, notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty. No wife shall be entitled to receive an allowance from her husband under this section, if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by consent.

**Note.**—"Due proof" means legal proof—that is, proof upon oath;



and the respondent must be allowed to make his defence as in any other charge against him.—*Gonda v. Pyari Doss Gossain*, 13 W.R. Crim. 19. And an order must be founded on proof in the same proceeding, not on knowledge acquired by the magistrate in some other case.—*In re Lopoti Domni*, 8 W.R. Crim. 67.

Under the old Code it was held that the issue of a warrant was permissible for every breach of an order of maintenance made under Sect. 316, but that there seemed no ground for saying that a defendant could get out of his liability for any payment by the failure to issue a warrant for the levy of that payment; and that the only result of issuing a warrant for an aggregate of payments would be that, in default of payment, imprisonment for but one month could be awarded, no ground appearing either in reason or law for the defendant being permitted further to benefit by his disobedience and the complainant's neglect.—Ruling, April 19, 1871, 6 Mad. H.C. Reps. Appen. 22. But the present section differs from Sect. 316, the corresponding section of the old Code, in that the words, "for each month's allowance remaining unpaid," have been added after the words, "for any term not exceeding one month;" and this addition has probably been made to meet such a case as that above referred to; so that now, not only may an aggregate of payments be recovered under warrant issued, but as many months' imprisonment be awarded as there may be months' allowances unpaid.—And see a ruling of the Mad. High Court, 7 Mad. H.C. Reps. 37.

Where the magistrate's order directed the defendant to pay a monthly sum for the maintenance of his wife, and directed that the defendant be imprisoned rigorously for the term of fifteen days for every breach of the order, the High Court quashed the latter part of the order as irregular and bad in substance.—Ruling, July 28, 1870, 5 Mad. H.C. Reps. Appen. 34.

It is open to a husband upon whom an order to make an allowance to his wife has been made, after the making of such order, to prove that his wife is living in adultery, and upon such proof a magistrate is justified in cancelling such order.—*Chaker v. Ishvar Bhudar*, 8 Bom. H.C. Reps. C.C. 124.

An order directing a husband to pay his wife a monthly sum for the maintenance of his children, she not being entitled to maintenance from him, and he being willing to support his children in his

own house, is illegal.—*Pachoo Dass v. Sreemotee Soodhamonee*, 16 W.R. Crim. 72.

Where a criminal court ordered a husband to pay a sum of money monthly towards the maintenance of his wife and children, and a civil court subsequently, on the suit of the husband for the restitution of conjugal rights, gave the husband a decree, it was held that the order of the criminal court ceased to have any effect from the date of the decree of the civil court.—*Lopotee Domnee v. Tikla Modoi*, 13 W.R. Crim. 52.

An order made under Sect. 10, Act xlviii. of 1860 (a section of the Police Act similar to this), directing a Mahomedan husband to pay a monthly sum for the maintenance of his wife, does not deprive such husband of his inherent right to divorce his wife, and after such divorce the magistrate's order can no longer be enforced.—*In re Kasam Pirbhai*, 8 Bom. H.C. Rep. C.C. 95.

But a decision of a civil court refusing to enforce a contract or agreement against a man for the maintenance of a woman, cannot conclude either the woman from applying or a magistrate from making an order under this section for the maintenance of the illegitimate daughter of such man and woman.—*In re John Meiselback*, 17 W.R. 49.

The rejection of an application for maintenance made by the wife of a Christian who had relapsed into Hinduism and married a second wife is not warranted by the ruling of the Madras High Court of 8th November 1866, 3 Mad. H.C. Reps. Appen. 7.—See Ruling, 18th February 1868, 4 Mad. H.C. Reps. Appen. 3.

Where a woman had obtained an order of maintenance under this section against her husband, and applied to have it enforced, and her husband, when called on to show cause, divorced his wife in the presence of the court, the court, without entering on the question of what change in the circumstances such divorce effected, held that it could not relieve the husband from obeying the order up to the time when such possible change of circumstances might have taken place.—*Nepoor Aurst v. Jurai*, 19 W.R. Crim. 73.

This chapter does not deprive a wife of any remedy in the civil courts which she otherwise would have had.—*Lalla Gopeenath v. Mussamut Jeetun Roer*, 6 W.R. Civil Cases, 57.

A civil court has no jurisdiction to make a declaratory order as

to the paternity of an illegitimate child.—*Subad Domni v. Katiram Dome*, 20 W.R. Crim. 58.

An order under this section is not subject to appeal (Sect. 286f), but being a judicial proceeding (Sect. 4), it is subject to revision by the High Court (Sect. 297).

Under these sections, questions will arise as to what is cruelty; and doubtless it would be held that the cruelty referred to here is very nearly akin to that for which the divorce court in England is empowered to afford relief, especially as the other ground on which the magistrate may make an order for the maintenance of the wife, although she refuses to live with him when he is willing to keep her, is that he is living in adultery. It may be useful, therefore, to notice a few cases of what has been held to be cruelty in divorce cases.

Cruelty is everything which tends to bodily harm, and in that manner renders cohabitation unsafe. Whenever there is a tendency only to bodily mischief, it is a peril from which the wife must be protected; because it is unsafe for her to continue in the discharge of her conjugal duties, and to enforce that obligation upon her might endanger her security, and perhaps her life.—*Holden v. Holden*, 1 Hagg. 458. "Mere austerity of temper, petulance of manner, rudeness of language, a want of civil attention and accommodation, even occasional sallies of passion, if they do not threaten bodily harm, do not amount to legal cruelty. . . . Still less is it cruelty where it wounds not the natural but the acquired feelings arising from particular rank and situation; for the court has no scale of sensibilities by which it can gauge the *quantum* of injury done and felt. . . . Proof must be given of a reasonable apprehension of bodily hurt. The court is not to wait till hurt is actually done; but the apprehension must not arise merely from an exquisite and diseased sensibility of mind."—*Evans v. Evans*, 1 Hagg. 37; see also *Oliver v. Oliver*, *ib.* 364; *Kirkman v. Kirkman*, *ib.* 409; *Lockwood v. Lockwood*, 2 Curt. 283. Where an act of violence is committed under the influence of an acute disorder, and it is made clear that, the disorder having been subdued, there is no danger of a recurrence, the court will not interfere; but if the result has been a new condition of the brain, rendering the party liable to fits of ungovernable passion, then the court is bound to

emancipate the wife.—*Curtis v. Curtis*, 27 L.J.N.S.P. and M. 86; *Kirkman v. Kirkman*, 1 Hagg. 410; *Holden v. Holden*, *ib.* 458. Acts are not absolutely necessary. Words of abuse, it is true, produce only resentment; but words of menace, intimating an intention of doing bodily harm, and even affecting the security of life, must have the effect of producing terror and the apprehension of bodily injury, and are therefore legal cruelty.—*D'Aguilar v. D'Aguilar*, 1 Hagg. 775 (note); *Harris v. Harris*, 2 Hagg. 149. Blasphemy and immorality are not cruelty.—*Suggate v. Suggate*, 28 L.J.N.S.P. and M. 46. Where the husband frequently fell into violent fits of passion, at which times he abused her and called her names, by which means he frightened her so as to occasion several fits of sickness; and when she was sick, refused her all proper assistance, and in every respect behaved as a very bad husband, except that he did not beat her; and left her on the day of marriage, without consummating, and did not come to cohabit with her for several months; the court held this was sufficient proof of cruelty.—*Robinson v. Robinson*, 2 Add. 27. The communication of the venereal disease to the wife, or the attempt to cohabit with her when knowingly so affected, is cruelty—*Popkin v. Popkin*, 1 Hagg. 765; *Collett v. Collett*, 1 Curt. 679: but the communication of the disease must be wilful and reckless—*Jones v. Jones*, 1 Searle and Smith, 138; and a mere running of the risk will not be cruelty—*Ciocci v. Ciocci*, 1 Spink's Ecc. and Ad. Rep. 129, 131, 132.

The inability of a wife to live with her husband, without proof of cruelty, is no ground for decreeing her a separate maintenance.—*In re Mussamut Jesmut*, 6 W.R. 59.

If a magistrate unempowered make an order for maintenance, his proceeding will be void.—Sect. 536.

It appears not to have been decided whether, in the case of Mahommedans, a wife legally married, but not having attained puberty, can demand the means of support from her husband while she remains under her father's roof. Such cases of maintenance, however, will have been generally provided for by the parties interested.—See *Kolashan Bibee v. Sheikh Didar Buksh*, 24 W.R. Crim. 44.

**Sect. 537 (317).** *Alteration in allowance.*—On the application of any person receiving or ordered to pay a monthly allowance

under the provisions of Sect. 536, and on proof of a change in the circumstances of such person, his wife, or child, the Magistrate may make such alteration in the allowance ordered as he deems fit, provided the total sum of rupees fifty a month be not exceeded.

**Sect. 538. *Enforcement of order.***—A copy of the order of maintenance shall be given to the person for whose maintenance it is made, or to the guardian of such person, and shall be enforceable by any Magistrate in any place where the person to whom the order is addressed may be, on the Magistrate being satisfied as to the identity of the parties and the non-payment of the sum claimed.

## PART XII.

### MISCELLANEOUS PROVISIONS.

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#### CHAPTER XLII.

##### MISCELLANEOUS.

**Sect. 539.** *Procedure in miscellaneous criminal cases and proceedings.*—The procedure prescribed by this Act shall be followed, so far as it can be, in all miscellaneous criminal cases and proceedings which are instituted in any Court.

**Sect. 540.** *Saving of jurisdiction of Presidency Police Magistrates.*—Nothing in this Act shall be held to alter or affect the jurisdiction or procedure of the Magistrates or Commissioners of Police, or the Police in the Presidency Towns, except so far as this Act expressly provides for the same.

**Sect. 541.** *Saving of jurisdiction and procedure of Landholders Heads of Villages, Village Police Officers, Cantonment Magistrates.*—Nothing in this Act shall be held to alter or affect—

(a) The jurisdiction or procedure of landholders specially empowered according to law in the Presidency of Bombay,

(b) The jurisdiction or procedure of the heads of villages in the Presidency of Fort Saint George,

(c) The jurisdiction or procedure of Village Police Officers in the Presidency of Bombay,

(d) the jurisdiction or procedure of any officer duly authorized and appointed under the laws in force in the Presidencies of Fort Saint George and Bombay respectively, for the trial of petty offences in military bazaars at cantonments and stations occupied by the troops of those Presidencies respectively.

# ENACTMENTS REPEALED.

## SCHEDULE I.

### ENACTMENTS REPEALED.

#### PART I.—STATUTE.

Year and Chapter.	Title.	Extent of Repeal.
53 Geo. III. cap. clv.	An Act for continuing in the East India Company, for a further term, the possession of the British territories in India, together with certain exclusive privileges ; for establishing further Regulations for the government of the said territories, and the better administration of justice within the same ; and for regulating the trade to and from the places within the limits of the said Company's Charter.	Section one hundred and five.

#### PART II.—ACTS.

Number and Year.	Subject or Title.	Extent of Repeal.
V. of 1841	An Act for the greater uniformity of the process upon trials for State offences, and the amendment of such process in certain cases.	The whole.
XV. of 1843	An Act for the more extensive employment of Uncovenanted Agency in the Judicial Department.	Sections three, four, five, and six.
XV. of 1845	An Act for declaring and enacting the privileges of Native Officers and Soldiers of the Armies of the three Presidencies in respect of Judicial and Revenue proceedings.	So much as has not been repealed.
XXIX. of 1845	An Act to empower the Government of Bombay to appoint Joint Zillah Judges or Joint Session Judges.	Ditto.
VII. of 1853	An Act to extend the jurisdiction of Magistrates, under the 53 Geo. III. Cap. 155, Sect. 105, in cases of assaults, forcible entries, and other injuries accompanied with force, not being felonies.	The whole Act.
X. of 1854	An Act for regulating the powers of Assistants to Magistrates and of Deputy Magistrates appointed under Act XV. of 1843.	So much as has not been repealed.

# ENACTMENTS REPEALED.

## SCHEDULE I.—*continued.*

### PART II.—ACTS—*continued.*

Number and Year.	Subject or Title.	Extent of Repeal.
XX. of 1856	An Act to make better provision for the appointment and maintenance of Police Chowkeydars in Cities, Towns, Stations, Suburbs, and Bazaars in the Presidency of Fort William in Bengal.	Section fifty-eight.
XXV. of 1861	An Act for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter.	So much as has not been repealed.
XVII. of 1862	An Act to repeal certain Regulations and Acts relating to Criminal Law and Procedure.	Ditto.
VI. of 1864	An Act to authorise the punishment of whipping in certain cases.	Sections eight, eleven, and twelve.
XXVIII. of 1867	An Act to remove doubts as to the legality of certain sentences passed by tribunals, called Petty Sessions Courts, in the North-Western Provinces.	The whole Act.
XXXVI. of 1867	An Act to correct an error in Act No. XVII. of 1862.	The whole Act.
VIII. of 1869	An Act further to amend the Code of Criminal Procedure.	Ditto.
XXVII. of 1870	To amend the Indian Penal Code.	Sections sixteen and seventeen, and the two schedules.
XIX. of 1871	An Act to provide for the appointment of Session Judges in Bengal and the North-Western Provinces.	Sections one, two, three, four, five, and six.
Bombay Act VII. of 1867	An Act for the Regulation of the District Police in the Presidency of Bombay.	Section forty.

### PART III.—REGULATIONS.

Number and Year.	Title.	Extent of repeal.
BENGAL REGULATIONS.		
IX. of 1793	A Regulation for re-enacting, with Alterations and Modifications, the Regulations passed by the Governor General in Council on the 3d December 1790, and subsequent dates, for the Apprehension and Trial of Persons charged with Crimes or Misdemeanors.	Sections three and thirty-four.



# ENACTMENTS REPEALED.

## SCHEDULE I.—*Continued.*

### PART III.—REGULATIONS—*continued.*

Number and Year.	Title.	Extent of repeal.
IX. of 1804	A Regulation for altering the denomination of the Court of Circuit and the Provincial Court of Appeal for the Division of the Ceded Provinces: for the Administration of Justice in Criminal Cases, in the Conquered Provinces in the Doab and on the Right Bank of the River Jumna, and in the Territory ceded to the Honourable the East India Company in Bundelcund by the Peishwa.	So much as has not been repealed.
VI. of 1810	A Regulation for defining the penalties to which Zemindars and others shall be subject for neglecting to give due information of robberies and for harbouring robbers.	Ditto.
XVI. of 1810	A Regulation to amend the existing Rules for the Appointment of Zillah and City Magistrates; to provide for the Appointment of Joint and Assistant Magistrates; and to alter the Provisions in force for the Payment of a fixed Reward on the Conviction of Public Offenders.	Ditto.
I. of 1811	A Regulation for making more adequate Provision for the punishment of persons found guilty of the offence of breaking into Houses, Tents, or Boats; for subjecting to exemplary punishment Persons receiving or purchasing Plundered or Stolen Property; and for granting licenses to Gold or Silversmiths, Braziers or Coppersmiths, Ironsmiths, Pawnbrokers, retail Venders of Brass or Copper-ware, and Pykars or itinerant dealers in second-hand Articles.	Ditto.
III. of 1812	A Regulation for amending some of the Rules at present in force in regard to the conduct of inquiries into charges of a criminal nature, and for establishing additional provisions with a view to the more effectual apprehension of Criminals.	So much of section four as has not been repealed.
VIII. of 1814	A regulation for extending the provision contained in Clause Second, Section IV. Regulation III. 1812, to cases of Murder, Arson, and Theft.	So much as has not been repealed.

# ENACTMENTS REPEALED.

## SCHEDULE I.—*continued.*

### PART III.—REGULATIONS—*continued.*

Number and Year.	Title.	Extent and repeal.
XX. of 1817	A Regulation for reducing into one Regulation, with Amendments and Modifications, the several Rules which have been passed for the guidance of Darogahs and other Subordinate Officers of Police ; for modifying the existing Rules concerning the Resistance or Evasion of Criminal Process, and for requiring further aid to the Police, in certain cases, from Proprietors and Farmers of Land and their Local Managers, as well as from the Mundals and other Heads of Villages.	Section thirty-three, clauses one and two.
<b>MADRAS REGULATIONS.</b>		
IX. of 1816	A Regulation for reducing into one Regulation certain Rules which have been passed regarding the Office of the Zillah Magistrate, for modifying and defining his Powers, and for transferring the Office of Zillah Magistrate from the Judge to the Collector of the Zillah.	Sections three, four, and five.
II. of 1827	A Regulation for constituting the Assistant Judges appointed under Regulation I., 1827, Joint Criminal Judges of the Zillahs in which they may be stationed, and for defining the extent to which the Powers of Magistrate shall be exercised by Subordinate Collectors.	So much as has not been repealed.
VIII. of 1827	A Regulation for granting to Native Judges Jurisdiction in Criminal Cases.	Ditto.
<b>BOMBAY REGULATIONS.</b>		
XII. of 1827	A Regulation for the establishment of a system of Police throughout the Zillahs subordinate to Bombay, for providing Rules for its Administration, and for defining the Duties and Powers of all Police Authorities and Servants.	Section ten, clause four, so much of section thirteen as has not been repealed, and section thirty - seven, clause three.
XIII. of 1827	A Regulation for defining the Constitution of Courts of Criminal Justice and the Functions and Proceedings thereof.	Sections one, two, three, seven, eight, nine, fourteen, and fifteen. Sections twenty-seven and twenty-eight.

## FORMS OF SUMMONS, WARRANTS, BONDS, AND RECOGNIZANCES.

**SCHEDULE I.—Concluded.**

### PART III.—REGULATIONS—*concluded.*

Number and Year.	Title.	Extent of repeal.
III. of 1830	A Regulation rescinding Regulations VIII. and XII. of 1828, and vesting the Criminal Judges with the Powers and Functions of Session Judges.	Sections two and six.
IV. of 1830	A Regulation rescinding such Parts of Regulation XII. of 1827 as vest the Criminal Judge with Police Jurisdiction of the Magistrate and his Assistants.	Section two.
VIII. of 1831	A Regulation for modifying the Jurisdiction of Session Judges and Judicial Commissioners.	The whole.

**SCHEDULE II.—FORMS OF SUMMONS, WARRANTS, BONDS,  
AND RECOGNIZANCES.**

## A

### FORM OF SUMMONS (Section 152).

To *A. B.*, of

Whereas your attendance is necessary to answer to a complaint of (*state shortly the offence complained of*): You are hereby required to appear in person or by authorised agent, as the case may be, before the [Magistrate] of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_.

**Herein fail not.**

(Signature and Seal.)

**Dated the**

**day of**

## B.

### FORM OF WARRANT (Section 159).

To \_\_\_\_\_ (name and designation of the person or persons who are to execute the warrant).

Whereas \_\_\_\_\_ of \_\_\_\_\_ is accused of the offence of  
(state the offence): You are hereby directed to apprehend the said  
\_\_\_\_\_ and produce him before me.

**Herein fail not.**

*(Signature and Seal.)*

**This warrant may be endorsed as follows:—**

If the said \_\_\_\_\_ shall give bail, himself in the sum of \_\_\_\_\_  
with one surety in the sum of \_\_\_\_\_ (or two sureties each in the sum of \_\_\_\_\_  
\_\_\_\_\_ ) to appear before me on the \_\_\_\_\_ day of \_\_\_\_\_ he  
may be released.

**Dated**

(Signature.)

# FORMS OF SUMMONS, WARRANTS, BONDS, AND RECOGNIZANCES.

## C.

### FORM OF WARRANT OF COMMITMENT FOR INTERMEDIATE CUSTODY (Sections 196, 197 and 303).

To Jailer of

Whereas of is charged with (*state the offence in respect of which the prisoner is charged*) and has been committed to take his trial before the Court of at

You are hereby required to receive the said into your custody and to produce him before the said Court when so required.

(Signature.)

(Office and powers.)

Dated

## D.

### FORM OF WARRANT OF COMMITMENT (Section 303).

To Jailer of

Whereas of was convicted before me (*name and official designation*) of the offence of (*mention the offence, quoting Act and Section*) and was sentenced to (*state the punishment fully and distinctly, mentioning its nature and extent*): You are hereby required to receive the said into your custody in the said jail of together with this warrant, and there carry the aforesaid sentence into execution according to law.

(Signature.)

Dated the

day of

## E.

### FORM OF BOND TO KEEP THE PEACE (Section 493).

Whereas I inhabitant of have been called upon to enter into a bond to keep the peace for the term of , I hereby bind myself not to commit a breach of the peace or do any act that may probably occasion a breach of the peace during the said term; and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees.

(Signature.)

Dated

### FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF THE PRINCIPAL.

I hereby declare myself surety for the above-said that he shall not commit a breach of the peace or do any act that may probably occasion a breach of the peace during the said term; and in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the sum of rupees.

(Signature.)

Dated

## F.

### FORM OF RECOGNIZANCE TO PROSECUTE OR GIVE EVIDENCE (Sections 130 and 360).

I of do hereby bind myself to appear at in the Court of at o'clock on the day of next, and then and there to prosecute (*or as the case may be*, to prosecute and give evidence, or to give

## CHARGES.

evidence) in the matter of a charge of \_\_\_\_\_ against one *A. B.*, and to attend at the said Court from day to day, or as I may be otherwise directed by the presiding officer; and in case of my making default herein, I bind myself to forfeit to Her Majesty the sum of \_\_\_\_\_ rupees.

(Signature.)

Dated \_\_\_\_\_

G.

### FORM OF BOND FOR GOOD BEHAVIOUR (*Section 509*).

Whereas I \_\_\_\_\_ inhabitant of \_\_\_\_\_ have been called to enter into a bond to be of good behaviour to Her Majesty the Queen and to all her subjects, for the term of \_\_\_\_\_, I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term, and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of \_\_\_\_\_ rupees.

(Signature.)

Dated \_\_\_\_\_

### FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF THE PRINCIPAL.

I hereby declare myself surety for the above-said \_\_\_\_\_ that he shall be of good behaviour to Her Majesty and to all her subjects during the said term; and in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the sum of \_\_\_\_\_ rupees.

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## SCHEDULE III.—CHARGES.

### (I.)—CHARGES WITH ONE HEAD.

(a) I [*name and office of Magistrate, &c.*] hereby charge you [*name of accused person*] as follows:—

(b) *On Penal Code, Section 121.*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, waged war against the Queen, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session.

(c) And I hereby direct that you be tried by the said Court on the said charge.

[Signature and seal of the Magistrate.]

[To be substituted for (b).]

(2.) *On Section 124.*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, with the intention of inducing the Honourable *A. B.*, Member of the Council of the Governor General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session.

(3.) *On Section 161.*—That you, being a public servant in the \_\_\_\_\_ Department, directly accepted from [*state the name*] for another party [*state*

## CHARGES.

*the name*] a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session.

(4.) *On Section 304.*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, committed culpable homicide not amounting to murder, causing the death of \_\_\_\_\_, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session.

(5.) *On Section 306.*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, abetted the commission of suicide by *A. B.*, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session.

(6.) *On Section 325.*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, voluntarily caused grievous hurt to \_\_\_\_\_, and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session.

(7.) *On Section 392.*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, committed robbery, an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session.

(8.) *On Section 395.*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session.

(9.) *On Section 166.*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ did (or omitted to do, as the case may be) \_\_\_\_\_ such conduct being contrary to the provisions of Act \_\_\_\_\_ Section \_\_\_\_\_, and was known by you to be pre-judicial to \_\_\_\_\_ and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session.

(10.) *On Section 193.*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ in the course of the trial of \_\_\_\_\_ before \_\_\_\_\_ stated in evidence that “ \_\_\_\_\_ ” which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code and within the cognizance of the Court of Session.

In cases tried by Magistrates substitute “within my cognizance” for “within the cognizance of the Court of Session.” In (d) omit “by the said Court.”

### (II).—CHARGES WITH TWO OR MORE HEADS.

(a) I [*name and office of Magistrate, &c.*,] hereby charge you [*name of accused person*] as follows :—

(b) *On Penal Code, Sections 241 and 242.*—*First*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, knowing a coin to be counterfeit, delivered the same to another person, by name *A. B.*, as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session.

*Secondly*—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, knowing a coin to be counterfeit, attempted to induce

## CHARGES.

another person, by name *A. B.*, to receive it as genuine, and thereby committed an offence punishable under section 242 of the Indian Penal Code, and within the cognizance of the Court of Session.

(c) and I hereby direct that you be tried by the said Court on the said charge.

[Signature and Seal of the Magistrate.]

For (b) *On Sections 302 and 304.—First*—That you, on or about the day of at , committed murder by causing the death of , and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session.

*Secondly*—That you, on or about the day of at , by causing the death of , committed culpable homicide, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session.

For (b) *On Sections 379 and 382.—First*—That you, on or about the day of at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session.

*Secondly*—That you, on or about the day of at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

*Thirdly*—That you, on or about the day of at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

*Fourthly*—That you, on or about the day of at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

For (b) *Alternative charges on Section 193.*—That you, on or about the day of at , in the course of the inquiry into before stated in evidence that “ and that you, on or about the day of at in the course of the trial of before stated in evidence that “

” one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session.

In trials before Magistrates substitute “within my cognizance” for “within the cognizance of the Court of Session,” and omit “by the said Court.”

## EXPLANATORY NOTES.

### SCHEDULE IV.

#### EXPLANATORY NOTES.

1st.—The entries in the second and sixth columns of the schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

2d.—The term "Whether bailable or not," in column five, is to be taken in connection with the provisions of Sects. 388 and 389 of this Code.

3d.—Offences may be tried by a Court superior to the Court specifically mentioned in column seven. For example, a Court of Session may try an offence entered in column seven as triable by a Magistrate.

4th.—The words "any Magistrate" as used in column seven, shall include any Magistrate of the first, second, or third class.

5th.—In the territories in British India to which the General Regulations of Bengal, Madras, and Bombay do not extend, the powers given by this Act shall be exercised by such Officers as the Local Government of those territories respectively shall appoint.

6th.—The last part of the schedule headed "Offences against other Laws" shall not be taken to alter or affect any special provision contained in such laws regarding the procedure to be followed in the case of offences made punishable thereby.

7th.—The direction in column four is meant to indicate to Magistrates the manner in which the discretion vested in them by Sects. 148, 149, and 150 is commonly to be used, but it is not to affect the definition of summons cases and warrant cases given in Sect. 4.



CHAPTER V.—OF ABETMENT.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	The same punishment as for the offence abetted.	By the Court by which the offence abetted is triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
111	When one act is abetted and a different act is done, subject to the proviso.	Ditto.	Ditto.	Ditto.	The same punishment as for the offence intended to be abetted.	Ditto.
113	When an effect is caused by the act abetted different from that intended by the abettor.	Ditto.	Ditto.	Ditto.	The same punishment as for the offence committed.	Ditto.
114	If abettor is present when offence is committed.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for seven years and fine.	Ditto.
115	Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for fourteen years and fine.	Ditto.
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto.	Ditto.	According as the offence abetted is bailable or not.	Imprisonment extending to one-fourth part of the longest term, and of any description provided for the offence, or fine, or both.	Ditto.
	If the abettor or the person abetted be a public servant, whose duty is to prevent the offence.	Ditto.	Ditto.	Ditto.	Imprisonment extending to one-half of the longest term, and of any description provided for the offence, or fine, or both.	Ditto.
117	Abetting the commission of an offence by the public, or by more than ten persons.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, or fine, or both.	Ditto.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for seven years, and fine.	Ditto.

	If the offence be not committed	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, and fine.	Ditto.
119	A public servant concealing a design to commit an offence, which it is his duty to prevent, if the offence be committed.	Ditto.	Ditto.	According as the offence abetted is bailable or not.	Imprisonment extending to one-half of the longest term, and of any description provided for the offence, or fine, or both.	Ditto.
	If the offence be punishable with death or transportation.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for ten years.	Ditto.
	If the offence be not committed	Ditto.	Ditto.	According as the offence abetted is bailable or not.	Imprisonment extending to one-fourth part of the longest term, and of any description provided for the offence, or fine, or both.	Ditto.
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto.	Ditto.	Ditto.	Imprisonment extending to one-fourth part of the longest term, and of the description provided for the offence, or fine, or both.	Ditto.
	If not committed	Ditto.	Ditto.	Ditto.	Imprisonment extending to one-eighth part of the longest term, and of the description provided for the offence, or fine, or both.	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE.

121	Waging or attempting to wage war, or abetting the waging of war against the Queen.	Shall not arrest without warrant.	Warrant	Not bailable.	Death, or transportation for life, and forfeiture of property.	Court of Session.
121A.	Conspiring to commit certain offences against the State.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment for shorter term, or imprisonment of either description for ten years.	Ditto.
122	Collecting arms, &c., with the intention of waging war against the Queen.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for ten years, and forfeiture of property.	Ditto.
123	Concealing with intent to facilitate a design to wage war.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for ten years, and fine.	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE—*continued.*

1 Section	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall or shan't issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
124	Assaulting Governor General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	Shall not arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for seven years, and fine.	Court of Session.
124A.	Exciting, or attempting to excite, disaffection	Ditto.	Ditto.	Ditto.	Transportation for life or for any term, and fine, or imprisonment of either description for three years and fine, or fine.	Ditto.
125	Waging war against any Asiatic power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto.	Ditto.	Ditto.	Transportation for life and fine, or imprisonment of either description for seven years and fine, or fine.	Ditto.
126	Committing depredation on the territories of any power in alliance or at peace with the Queen.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for seven years, and fine and forfeiture of certain property.	Ditto.
127	Receiving property taken by war or depredation, mentioned in Sects. 125 and 126.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
128	Public servant voluntarily allowing prisoner of State or War in his custody to escape.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.
129	Public servant negligently suffering prisoner of State or War in his custody to escape.	Ditto.	Ditto.	Bailable.	Simple imprisonment for three years, and fine.	Court of Session or Magistrate of the first class.
130	Aiding escape of, rescuing, or harbouring such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto.	Ditto.	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session.

## CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

		May arrest without warrant.	Warrant.	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine. Death or transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session.
131	A betting mutiny, or attempting to seduce an officer, soldier, or sailor from his allegiance or duty.					
132	A consent of mutiny if mutiny is committed in consequence thereof.	Ditto.	Ditto.	Ditto.		Ditto.

# OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

133	Abetment of an assault by an officer, soldier, or sailor on his superior officer when in the execution of his office.	Ditto.	Ditto.	Imprisonment of either description for three years, and fine.	Court of Session or Magistrate of the first class.
134	Abetment of such assault, if the assault is committed.	Ditto.	Ditto.	Imprisonment of either description for seven years, and fine.	Court of Session.
135	Abetment of the desertion of an officer, soldier, or sailor.	Ditto.	Ditto.	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
136	Harbouring such an officer, soldier, or sailor who has deserted.	Ditto.	Ditto.	Fine of five hundred rupees.	Ditto.
137	Desertion concealed on board merchant vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons.	Imprisonment of either description for six months, or fine, or both.	Ditto.
138	Abetment of act of insubordination by an officer, soldier, or sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant.	Imprisonment of either description for three months, or fine of five hundred rupees, or both.	Any Magistrate.
140	Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.	Ditto.	Summons.		

## CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

143	Being member of an unlawful assembly.	May arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for six months, or fine, or both.	Any Magistrate.
144	Joining an unlawful assembly armed with any deadly weapon.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for two years, or fine, or both.	Ditto.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
147	Rioting . . . . .	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, or fine, or both.	Ditto.
148	Rioting armed with a deadly weapon . . . . .	Ditto.	Ditto.	Ditto.	The same as for the offence.	Court of Session or Magistrate of the first class.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	By the Court by which the offence is triable.	

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY—continued.

1 Section	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
150	Hiring, engaging, or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged, or employed. Summons.	According as the offence is bailable or not.	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	By the Court by which the offence is triable.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Ditto.	Summons.	Bailable.	Imprisonment of either description for six months, or fine, or both.	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot, &c.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for three years, or fine, or both.	Court of Session or Magistrate of the first class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for one year, or fine, or both.	Any Magistrate.
798	If not committed . . . . .	Ditto.	Summons.	Ditto.	Imprisonment of either description for six months, or fine, or both.	Ditto.
154	Owner or occupier of land not giving information of riot, &c.	Shall not arrest without warrant.	Ditto.	Ditto.	Fine of one thousand rupees.	Magistrate of the first or second class.
155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Ditto.	Ditto.	Ditto.	Fine.	Ditto.
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
157	Harbouring person hired for an unlawful assembly.	May arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for six months, or fine, or both.	Ditto.
158	Being hired to take part in an unlawful assembly or riot.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
159	Or to go armed . . . . .	Ditto.	Warrant.	Ditto.	Imprisonment of either description for two years, or fine, or both.	Ditto.
160	Committing affray . . . . .	Shall not arrest without warrant.	Summons.	Ditto.	Imprisonment of either description for one month, or fine of one hundred rupees, or both.	Any Magistrate.

# CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for three years, or fine, or both.	Court of Session or Magistrate of the first class.
162	Taking a gratification in order by corrupt or illegal means to influence a public servant.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto.	Ditto.	Ditto.	Simple imprisonment for one year, or fine, or both.	Magistrate of the first class.
164	A betment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, or fine, or both.	Court of Session or Magistrate of the first class.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto.	Ditto.	Ditto.	Simple imprisonment for two years, or fine, or both.	Magistrate of the first or second class.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto.	Ditto.	Ditto.	Simple imprisonment for one year, or fine, or both.	Ditto.
167	Public servant framing an incorrect document with intent to cause injury.	Ditto.	Ditto.	Ditto.	Simple imprisonment for two years, or fine, or both, and confiscation of property, if purchased.	Court of Session or Magistrate of the first class.
168	Public servant unlawfully engaging in trade .	Ditto.	Ditto.	Ditto.	Simple imprisonment for one year, or fine, or both.	Magistrate of the first class.
169	Public servant unlawfully buying or bidding for property.	Ditto.	Ditto.	Ditto.	Simple imprisonment for two years, or fine, or both, and confiscation of property, if purchased.	Ditto.
170	Personating a public servant . . . .	May arrest without warrant.	Warrant.	Ditto.	Imprisonment of either description for two years, or fine, or both.	Any Magistrate.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto.	Summons.	Ditto.	Imprisonment of either description for three months, or fine of two hundred rupees, or both.	Ditto.

## CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

172	Absconding to avoid service of summons or other proceeding from a public servant. If summons or notice require attendance in person, &c., in a Court of Justice.	Shall not arrest without warrant.	Summons.	Bailable.	Simple imprisonment for one month, or fine of five hundred rupees, or both.	Any Magistrate.
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Ditto.	Ditto.	Ditto.	Simple imprisonment for six months, or fine of one thousand rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—continued.

1 Section	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
	If summons, &c., require attendance in person, &c., in a Court of Justice.	Shall not arrest without warrant.	Summons.	Bailable.	Simple imprisonment for six months, or fine of one thousand rupees, or both.	Magistrate of the first or second class.
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Ditto.	Ditto.	Ditto.	Simple imprisonment for one month, or fine of five hundred rupees, or both.	Any Magistrate.
	If the order require personal attendance, &c., in a Court of Justice.	Ditto.	Ditto.	Ditto.	Simple imprisonment for six months, or fine of one thousand rupees, or both.	Ditto.
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto.	Ditto.	Ditto.	Simple imprisonment for one month, or fine of five hundred rupees, or both.	Court in which the offence is committed subject to the provisions of Chapter XXXII. of this Code, or, if not committed in a Court, a Magistrate of the first or second class.
	If the document is required to be produced in or delivered to a Court of Justice.	Ditto.	Ditto.	Ditto.	Simple imprisonment for six months, or fine of one thousand rupees, or both.	Ditto.
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Ditto.	Ditto.	Ditto.	Simple imprisonment for one month, or fine of five hundred rupees, or both.	Magistrate of the first or second class.
	If the notice or information required respects the commission of an offence, &c.	Ditto.	Ditto.	Ditto.	Simple imprisonment for six months, or fine of one thousand rupees, or both.	Ditto.
177	Knowingly furnishing false information to a public servant.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
	If the information required respects the commission of an offence, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for two years, or fine of one thousand rupees, or both.	Ditto.

178	Refusing oath when duly required to take oath by a public servant.	Ditto.	Ditto.	Ditto.	Simple imprisonment for six months, or fine of one thousand rupees, or both.	Court in which the offence is committed, subject to the provisions of Chapter XXXII. of this Code, or if not committed in a Court, of Magistrate of the first or second class.
179	Being legally bound to state the truth, and refusing to answer questions.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto.	Ditto.	Ditto.	Simple imprisonment for three months, or fine of five hundred rupees, or both.	Ditto.
181	Knowingly stating to a public servant on oath as true that which is false.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first class.
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto.	Summons.	Ditto.	Imprisonment of either description for six months, or fine of one thousand rupees, or both.	Magistrate of the first or second class.
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for one month, or fine of five hundred rupees, or both.	Ditto.
185	Bidding by a person under a legal incapacity to purchase it, for property at a lawfully authorised sale, or bidding without intending to perform the obligations incurred thereby.	Shall not arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for one month, or fine of two hundred rupees, or both.	Ditto.
186	Obstructing public servant in discharge of his public functions.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three months, or fine of five hundred rupees, or both.	Ditto.
187	Omission to assist public servant when bound by law to give such assistance.	Ditto.	Ditto.	Ditto.	Simple imprisonment for one month, or fine of two hundred rupees, or both.	Ditto.
188	Willfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c.	Ditto.	Ditto.	Ditto.	Simple imprisonment for six months, or fine of five hundred rupees, or both.	Ditto.



CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—*continued.*

1 Section	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction or annoyance or injury to persons lawfully employed. If such disobedience causes danger to human life, health, or safety, &c.	Shall not arrest without warrant.	Summons.	Bailable.	Simple imprisonment for one month, or fine of two hundred rupees, or both.	Magistrate of the first or second class.
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Ditto.	Ditto.	Ditto.	Imprisonment for six months, or fine of one thousand rupees, or both.	Ditto.
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for two years, or fine, or both.	Ditto.
					Imprisonment of either description for one year, or fine, or both.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for seven years, and fine.	Court of Session, or Magistrate of the first class.
	Giving or fabricating false evidence in any other case.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, and fine.	Ditto.
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto.	Ditto.	Not bailable.	Transportation for life, or rigorous imprisonment for ten years, and fine.	Court of Session.
195	If innocent person be thereby convicted and executed.	Ditto.	Ditto.	Ditto.	Death, or as above.	Ditto.
	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation, or imprisonment for more than seven years.	Ditto.	Ditto.	Ditto.	The same as for the offence.	Ditto.
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto.	Ditto.	According as the offence of giving such evidence is bailable or not.	The same as for giving or fabricating false evidence.	Court of Session, or Magistrate, first class.

# FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto.	Badiable.	The same as for giving false evidence.	Ditto.
198	Using as a true certificate one known to be false in a material point.	Ditto.	Ditto.	Ditto.	Ditto.
199	False statement made in any declaration which is by law received as evidence.	Ditto.	Ditto.	Ditto.	Ditto.
200	Using as true any such declaration known to be false.	Ditto.	Ditto.	Ditto.	Ditto.
201	Causing disappearance of evidence of an offence committed, or giving false information touching it, to screen the offender, if a capital offence.	Ditto.	Ditto.	Imprisonment of either description for seven years, and fine.	Court of Session.
	If punishable with transportation, or imprisonment for ten years.	Ditto.	Ditto.	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.
	If punishable with less than ten years' imprisonment.	Ditto.	Ditto.	Imprisonment for one-fourth of the longest term, and of the description provided for the offence, or fine, or both.	By a Magistrate of the first class, or by the Court by which the offence is triable.
202	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto.	Ditto.	Imprisonment of either description for six months, or fine, or both.	Magistrate of the first or second class.
203	Giving false information respecting an offence committed.	Summons.	Ditto.	Imprisonment of either description for two years, or fine, or both.	Ditto.
204	Secreting or destroying any document to prevent its production as evidence.	Warrant.	Ditto.	Imprisonment of either description for three years, or fine, or both.	Magistrate of the first class.
205	False personation for the purposes of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto.	Ditto.	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first class.
206	Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto.	Ditto.	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto.	Ditto.	Ditto.	Ditto.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Ditto.	Ditto.	Ditto.	Magistrate of the first class.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—continued.

1	2	3	4	5	6	7
Section	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
209	False claim in a Court of Justice . . .	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for two years, and fine.	Magistrate of the first class.
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for two years, or fine, or both.	Ditto.
211	False charge of offence made with intent to injure.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
	If offence charged be capital or punishable with transportation for life, or imprisonment for seven years, or upwards.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for seven years, and fine.	Court of Session.
212	Harbouring an offender if the offence be capital.	May arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for five years, and fine.	Court of Session, or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for ten years.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, and fine.	Ditto.
	If punishable with imprisonment for one year, and not for ten years.	Ditto.	Ditto.	Ditto.	Imprisonment for one-fourth of the longest term, and of the description provided for the offence, or fine, or both.	By the Magistrate of the first class, or by the Court by which the offence is triable.
213	Taking gift, &c., to screen an offender from punishment, if the offence be capital.	Shall not arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for seven years, and fine.	Court of Session.
	If punishable with transportation for life, or with imprisonment for ten years.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.
	If with imprisonment for less than ten years .	Ditto.	Ditto.	Ditto.	Imprisonment for one-fourth of the longest term, and of the description provided for the offence, or fine, or both.	By a Magistrate of the first class, or by the Court by which the offence is triable.
214	Gift made to cause restoration of property in consideration of screening offender, if the offence be capital.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for seven years, and fine.	Court of Session.
	If punishable with transportation for life, or with imprisonment for ten years.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.

**FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.**

215	If with imprisonment for less than ten years .  Taking gift to help to recover moveable property of which a person has been deprived by an offence, without causing apprehension of offender.	Ditto.	Ditto.	Ditto.	Imprisonment for one-fourth of the longest term, and of the description provided for the offence, or fine, or both.	By a Magistrate of the first class, or by the Court by which the offence is triable.
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.  If punishment with transportation for life, or with imprisonment for ten years.  If with imprisonment for one year and not for ten years.	Ditto. May arrest without warrant. Ditto. Ditto.	Ditto. Ditto. Ditto. Ditto.	Ditto. Ditto. Ditto. Ditto.	Imprisonment of either description for two years, or fine, or both. Imprisonment of either description for seven years, and fine. Imprisonment of either description for three years, and fine. Imprisonment for one-fourth of the longest term, and of the description provided for the offence, or fine, or both.	Magistrate of the first class. Court of Session, or Magistrate of the first class. Ditto. By a Magistrate of the first class, or by the Court by which the offence is triable.
217	Public servant disobeying a direction of law with intent to save persons from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons.	Ditto.	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for three years, or fine, or both.	Court of Session.
219	Public servant in a judicial proceeding making or pronouncing an order, report, verdict, or decision which he knows to be contrary to law.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for seven years, or fine, or both.	Ditto.
220	Commitment for trial or confinement by a person having authority who knows that he is acting contrary to law.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital. If punishable with transportation for life, or imprisonment for ten years.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for seven years, with or without fine. Imprisonment of either description for three years, with or without fine.	Ditto. Court of Session, or Magistrate of the first class.
	If with imprisonment for less than ten years .	Ditto.	Ditto.	Ditto.	Imprisonment of either description for two years, with or without fine.	Magistrate of the first or second class.

## CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—continued.

1 Section	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice, if under sentence of death. If under sentence of transportation for life, or imprisonment or penal servitude for ten years or upwards. If under sentence of imprisonment for less than ten years.	Shall not arrest without warrant. Ditto. Ditto. Ditto.	Warrant. Ditto. Ditto. Summons.	Not bailable. Ditto. Bailable. Ditto.	Transportation for life or imprisonment of either description for fourteen years, with or without fine. Imprisonment of either description for seven years, with or without fine. Imprisonment of either description for three years, or fine, or both. Simple imprisonment for two years, or fine, or both.	Court of Session. Ditto. Court of Session, or Magistrate of the first class. Magistrate of the first or second class.
223	Escape from confinement negligently suffered by a public servant.	Ditto.	Summons.	Ditto.	Simple imprisonment for two years, or fine, or both.	Magistrate of the first or second class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant.	Ditto.	Imprisonment of either description for two years, or fine, or both.	Ditto.
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody. If charged with an offence punishable with transportation for life, or imprisonment for ten years.	Ditto. Ditto.	Ditto. Ditto.	Ditto. Not bailable.	Ditto. Imprisonment of either description for three years, and fine.	Ditto. Court of Session, or Magistrate of the first class.
	If charged with a capital offence . . . .	Ditto.	Ditto.	Ditto.	Imprisonment of either description for seven years, or fine.	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude, or imprisonment for ten years or upwards. If under sentence of death . . . .	Ditto. Ditto. Ditto.	Ditto. Ditto. Ditto.	Ditto. Ditto. Ditto.	Ditto. Transportation for life or imprisonment of either description for ten years, and fine. Imprisonment of either description for one year, or fine, or both.	Ditto. Ditto.
225A	Escape, or attempt to escape, from custody for failing to furnish security for good behaviour.	Ditto.	Ditto.	Bailable.	Transportation for life, and fine, and rigorous imprisonment for three years before transportation.	Magistrate of the first or second class.
226	Unlawful return from transportation . . . .	Ditto.	Ditto.	Not bailable.	Transportation for life, and fine, and rigorous imprisonment for three years before transportation.	Court of Session.

# OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons.	Ditto.	Punishment of original sentence, or if part of the punishment has been undergone, the residue.	By the Court by which the original offence was triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Ditto.	Ditto.	Bailable.	Simple imprisonment for six months, or fine of one thousand rupees, or both.	Court in which the offence is committed, subject to the provisions contained in Chapter XXXII. of this Code.
229	Personation of a juror or assessor . . .	Ditto.	Ditto.	Ditto.	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first class.

## CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

231	Counterfeiting or performing any part of the process of counterfeiting Coin.	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for seven years, and fine.	Court of Session.
232	Counterfeiting or performing any part of the process of counterfeiting the Queen's Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for ten years, and fine.	Ditto.
233	Making, buying, or selling instrument for the purpose of counterfeiting Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.
234	Making, buying, or selling instrument for the purpose of counterfeiting the Queen's Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for seven years, and fine.	Court of Session.
235	Possession of instrument or material for the purpose of using the same for counterfeiting Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.
	If Queen's Coin . . . . .	Ditto.	Ditto.	Ditto.	Imprisonment of either description for ten years, and fine.	Court of Session.
236	A betting in India, the counterfeiting out of British India of Coin.	Ditto.	Ditto.	Ditto.	The punishment provided for abetting the counterfeiting of such coin within British India.	Ditto.
237	Import or export of counterfeit Coin, knowing the same to be counterfeit.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—continued.

1	2	3	4	5	6	7
Section	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
238	Import or export of counterfeit of the Queen's Coin, knowing the same to be counterfeit.	May arrest without warrant.	Warrant.	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session.
239	Having any counterfeit Coin known to be such when it came into possession, and delivering, &c., the same to any person.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for five years, and fine.	Court of Session, or Magistrate of the first class.
240	The same with respect to the Queen's Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for ten years, and fine.	Ditto.
241	Knowingly delivering to another any counterfeit Coin as genuine which when first possessed the deliverer did not know to be counterfeit.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for two years, or fine of ten times the value of the Coin counterfeited, or both.	Magistrate of the first or second class.
242	Possession of counterfeit Coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.
243	Possession of Queen's Coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for seven years, and fine.	Ditto.
244	Persons employed in a Mint causing Coin to be of a different weight or composition from that fixed by law.	Ditto.	Ditto.	Ditto.	Ditto.	Court of Session.
245	Unlawfully taking from a Mint any coining instrument.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
246	Fraudulently diminishing the weight or altering the composition of any Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first class.
247	Fraudulently diminishing the weight or altering the composition of the Queen's Coin.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for seven years, and fine.	Ditto.
248	Altering appearance of any Coin with intent that it shall pass as a Coin of a different description.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, and fine.	Ditto.
249	Altering appearance of the Queen's Coin with intent that it shall pass as a Coin of a different description.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for seven years, and fine.	Ditto.

# OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

250	Delivery to another of Coin possessed with the knowledge that it is altered.	Ditto.	Ditto.	Imprisonment of either description for five years, and fine.	Ditto.
251	Delivery of Queen's Coin possessed with the knowledge that it is altered.	Ditto.	Ditto.	Imprisonment of either description for ten years, and fine.	Ditto.
252	Possession of altered Coin by a person who knew it to be altered when he became possessed thereof.	Ditto.	Ditto.	Imprisonment of either description for three years, and fine.	Ditto.
253	Possession of Queen's Coin by a person who knew it to be altered when he became possessed thereof.	Ditto.	Ditto.	Imprisonment of either description for five years, and fine.	Ditto.
254	Delivery to another of Coin as genuine, which, when first possessed, the deliverer did not know to be altered.	Ditto.	Ditto.	Imprisonment of either description for two years, or fine of ten times the value of the Coin.	Magistrate of the first or second class.
255	Counterfeiting a Government stamp . . .	Ditto.	Bailable.	Imprisonment of either description for ten years, and fine.	Court of Session.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Ditto.	Ditto.	Imprisonment of either description for seven years, and fine.	Ditto.
257	Making, buying, or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto.	Ditto.	Ditto.	Ditto.
258	Sale of counterfeit Government stamp . . .	Ditto.	Ditto.	Ditto.	Ditto.
259	Having possession of a counterfeit Government stamp.	Ditto.	Ditto.	Ditto.	Court of Session, or Magistrate of the first class.
260	Using as genuine a Government stamp known to be counterfeit.	Ditto.	Ditto.	Imprisonment of either description for seven years, or fine, or both.	Ditto.
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause wrongful loss to Government.	Ditto.	Ditto.	Imprisonment of either description for three years, or fine, or both.	Ditto.
262	Using a Government stamp known to have been before used.	Ditto.	Ditto.	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
263	Eraseure of mark denoting that stamp has been used.	Ditto.	Ditto.	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first class.



CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

1 Section	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
264	Fraudulent use of false instrument for weighing	Shall not arrest without war- rant.	Summons.	Bailable.	Imprisonment of either de- scription for one year, or fine, or both.	Magistrate of the first or second class.
265	Fraudulent use of false weight or measure	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
266	Being in possession of false weights or measures for fraudulent use.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
267	Making or selling false weights or measures for fraudulent use.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY,  
AND MORALS.

						Magistrate of the first or second class.
269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest with- out warrant.	Summons.	Bailable.	Imprisonment of either de- scription for six months, or fine, or both.	Ditto.
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto.	Ditto.	Ditto.	Imprisonment of either de- scription for two years, or fine, or both.	Ditto.
271	Knowingly disobeying any quarantine rule	Shall not arrest without war- rant.	Ditto.	Ditto.	Imprisonment of either de- scription for six months, or fine, or both.	Ditto.
272	Adulterating food or drink for man intended for sale so as to make the same noxious.	Ditto.	Ditto.	Ditto.	Imprisonment of either de- scription for six months, or fine of one thousand rupees, or both.	Ditto.
273	Selling any food or drink as food and drink for man knowing the same to be noxious.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

# OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, ETC.

276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto.	Ditto.	Ditto.	Ditto.
277	Defiling the water of a public spring or reservoir	May arrest without warrant.	Ditto.	Ditto.	Any Magistrate.
278	Making atmosphere noxious to health	Shall not arrest without warrant.	Ditto.	Ditto.	Ditto.
279	Driving or riding on a public way so rashly or negligently as to endanger human life, &c.	May arrest without warrant.	Ditto.	Ditto.	Ditto.
280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	Ditto.	Ditto.	Ditto.	Magistrate of the first or second class.
281	Exhibition of a false light, mark, or buoy	Ditto.	Warrant.	Ditto.	Court of Session.
282	Conveying for hire any person by water in a vessel in such a state, or so loaded, as to endanger his life.	Ditto.	Summons.	Ditto.	Magistrate of the first or second class.
283	Causing danger, obstruction, or injury in any public way or line of navigation.	Ditto.	Ditto.	Ditto.	Ditto.
284	Dealing with any poisonous substance so as to endanger human life, &c.	Shall not arrest without warrant.	Ditto.	Ditto.	Ditto.
285	Dealing with fire or any combustible matter so as to endanger human life, &c.	May arrest without warrant.	Ditto.	Ditto.	Any Magistrate.
286	So dealing with any explosive substance . . .	Ditto.	Ditto.	Ditto.	Ditto.
287	So dealing with any machinery . . .	Shall not arrest without warrant.	Ditto.	Ditto.	Magistrate of the first or second class.
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Ditto.	Ditto.	Ditto.	Ditto.
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt from such animal.	May arrest without warrant.	Ditto.	Ditto.	Any Magistrate.

# OFFENCES RELATING TO RELIGION.

## CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS—continued.

1	2	3	4	5	6	7
Section	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
290	Committing a public nuisance . . . .	Shall not arrest without warrant.	Summons.	Bailable.	Fine of two hundred rupees.	Any Magistrate.
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto.	Ditto.	Simple imprisonment for six months, or fine, or both.	Magistrate of the first or second class.
292	Sale, &c., of obscene books, &c. . . .	Ditto.	Warrant.	Ditto.	Imprisonment of either description for three months, or fine, or both.	Ditto.
293	Having in possession obscene books, &c., for sale or exhibition.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
294	Obscene songs . . . .	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
294A	Keeping a lottery office . . . .	Shall not arrest without warrant.	Summons.	Ditto.	Imprisonment of either description for six months, or fine, or both.	Any Magistrate.
	Publishing proposals relating to lotteries .	Ditto.	Ditto.	Ditto.	Fine of one thousand rupees.	Ditto.

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## CHAPTER XV.—OFFENCES RELATING TO RELIGION.

		May arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
295	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for one year, or fine, or both.	Ditto.
296	Causing a disturbance to an assembly engaged in religious worship.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
297	Trespassing in a place of worship or sepulture, disturbing funeral with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight of any person, with intention to wound his religious feelings.	Shall not arrest without warrant.	Ditto.	Ditto.	Ditto.	Ditto.

*Offences affecting life.*

		May arrest without warrant.	Warrant.	Not bailable.	Death, transportation for life, and fine.	Court of Session.
302	Murder . . . . .	Ditto.	Ditto.	Ditto.	Death.	Ditto.
303	Murder by a person under sentence of transportation for life.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for ten years, or fine, or both.	Ditto.
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for two years, or fine, or both.	Court of Session, or Magistrate of the first class.
304A	Causing death by rash or negligent act . . .	Ditto.	Ditto.	Bailable.	Death, or transportation for life, or imprisonment for ten years, and fine.	Court of Session.
305	Abetment of suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	Ditto.	Ditto.	Not bailable.	Death, or transportation for life, or imprisonment for ten years, and fine.	Ditto.
306	Abetting the commission of suicide . . .	Ditto.	Ditto.	Ditto.	Imprisonment of either description for ten years, and fine.	Ditto.
307	Attempt to murder . . . . .	Ditto.	Ditto.	Ditto.	Transportation for life, or as above.	Ditto.
307	If such act cause hurt to any person . . .	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, or fine, or both.	Ditto.
308	Attempt to commit culpable homicide . . .	Ditto.	Ditto.	Bailable.	Imprisonment of either description for seven years, or fine, or both.	Ditto.
	If such act cause hurt to any person . . .	Ditto.	Ditto.	Ditto.	Simple imprisonment for one year, and fine.	Magistrate of the first or second class.
309	Attempt to commit suicide . . . . .	Ditto.	Ditto.	Ditto.	Transportation for life, and fine.	Court of Session.
311	Being a thug . . . . .	Ditto.	Ditto.	Not bailable.		

*Of the causing of Miscarriage; of injuries to unborn Children; of the exposure of Infants; and of the concealment of Births.*

	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for three years, or fine, or both.	Court of Session.
312	Causing miscarriage . . . . .	Ditto.	Ditto.	Imprisonment of either description for seven years, and fine.	Ditto.
	If the woman be quick with child . . .	Ditto.	Ditto.		

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—continued.

*Of the causing of Miscarriage ; of injuries to unborn Children ; and of the concealment of Births—continued.*

1 Section	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
313	Causing miscarriage without woman's consent	Shall not arrest without warrant.	Warrant.	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session.
314	Death caused by an act done with intent to cause miscarriage.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for ten years, and fine.	Ditto.
	If act done without woman's consent	Ditto.	Ditto.	Ditto.	Transportation for life, or as above.	Ditto.
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for ten years, or fine, or both.	Ditto.
316	Causing death of a quick-unborn child by an act amounting to culpable homicide.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for ten years, and fine.	Ditto.
317	Exposure of a child under twelve years of age by parent or person having care of it with intention of wholly abandoning it.	May arrest without warrant.	Ditto.	Bailable.	Imprisonment of either description for seven years, or fine, or both.	Ditto.
318	Concealment of birth by secret disposal of dead body.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for two years, or fine, or both.	Court of Session, or Magistrate of the first or second class.

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*Of Hurt.*

323	Voluntarily using hurt	May (Act xi. of 1874) arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for one year, or fine of one thousand rupees, or both.	Any Magistrate.
324	Voluntarily causing hurt by dangerous weapons or means.	May arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
325	Voluntarily causing grievous hurt	Ditto.	Ditto.	Ditto.	Imprisonment of either description for seven years, and fine.	Ditto.

# OFFENCES AFFECTING THE HUMAN BODY.

326	Voluntarily causing grievous hurt by dangerous weapons or means.	Ditto.	Ditto.	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session, or Magistrate of the first class.
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.	Ditto.	Warrant.	Ditto.	Imprisonment of either description for ten years, and fine.	Court of Session.
328	Administering stupefying drug with intent to cause hurt.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for seven years, and fine.	Ditto.
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for ten years, and fine.	Ditto.
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first class.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for ten years, and fine.	Court of Session.
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Ditto.	Summons.	Bailable.	Imprisonment of either description for one month, or fine of five hundred rupees, or both.	Any Magistrate.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for four years, or fine of two thousand rupees, or both.	Court of Session, or Magistrate of the first or second class.
336	Doing any act which endangers human life or the personal safety of others.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three months, or fine of two hundred and fifty rupees, or both.	Any Magistrate.
337	Causing hurt by an act which endangers human life, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for six months, or fine of five hundred rupees, or both.	Magistrate of the first or second class.
338	Causing grievous hurt by an act which endangers human life, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for two years, or fine of one thousand rupees, or both.	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—continued.

*Of wrongful Restraint and wrongful Confinement.*

1	2	3	4	5	6	7
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
341	Wrongfully restraining any person . . .	May arrest without warrant.	Summons.	Bailable.	Simple imprisonment for one month, or fine of five hundred rupees, or both.	Any Magistrate.
342	Wrongfully confining any person . . .	Ditto.	Ditto.	Ditto.	Imprisonment of either description for one year, or fine of one thousand rupees, or both.	Magistrate of the first or second class.
343	Wrongfully confining for three or more days .	Ditto.	Ditto.	Ditto.	Imprisonment of either description for two years, or fine, or both.	Ditto.
344	Wrongfully confining for ten or more days .	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first or second class.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for two years, in addition to imprisonment under any other section.	Ditto.
346	Wrongful confinement in secret .	May arrest without warrant.	Ditto.	Ditto.	Ditto.	Ditto.
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, and fine.	Ditto.
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Court of Session, or Magistrate of the first class.

*Of Criminal Force and Assault.*

352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for three months, or fine of five hundred rupees, or both.	Any Magistrate.
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# OFFENCES AFFECTING THE HUMAN BODY.

353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant.	Ditto.	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
355	Assault or criminal force with intent to dishonour a person otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons.	Ditto.	Ditto.	Ditto.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant.	Not bailable.	Ditto.	Any Magistrate.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for one year, or fine of one thousand rupees, or both.	Ditto.
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons.	Ditto.	Simple imprisonment for one month, or fine of two hundred rupees, or both.	Ditto.

## *Of Kidnapping, Forcible Abduction, Slavery, and forced Labour.*

363	Kidnapping . . . . .	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for seven years, and fine.	Court of Session, or Magistrate of the first class.
364	Kidnapping or abducting in order to murder .	Ditto.	Ditto.	Ditto.	Transportation for life, or rigorous imprisonment for ten years, and fine.	Court of Session.
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for seven years, and fine.	Ditto.
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for ten years, and fine.	Ditto.
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
368	Concealing or keeping in confinement a kidnapped person.	Ditto.	Ditto.	Ditto.	Punishment for kidnapping or abduction.	Ditto.
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for seven years, and fine.	Ditto.
370	Buying or disposing of any person as a slave .	Shall not arrest without warrant.	Ditto.	Bailable.	Ditto.	Ditto.



CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—continued.

*Of Kidnapping, Forcible Abduction, Slavery, and forced Labour—continued.*

1 Section	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
371	Habitual dealing in slaves . . . .	May arrest without warrant.	Warrant.	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session.
372	Selling or letting to hire a minor for the purpose of prostitution.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for ten years, and fine.	Court of Session, or Magistrate of the first class.
373	Buying or obtaining possession of a minor for the same purpose.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
374	Unlawful compulsory labour . . . .	Ditto.	Ditto.	Bailable.	Imprisonment of either description for one year, or fine, or both.	Any Magistrate.

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*Of Rape.*

376	Rape . . . . .	May arrest without warrant.	Warrant.	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session.

*Of Unnatural Offences.*

377	Unnatural offences . . . . .	May arrest without warrant.	Warrant.	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session.

OFFENCES AGAINST PROPERTY.

*Of Theft.*

	Thft	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for three years, or fine, or both.	Any Magistrate.
379	Thft . . . . .				Imprisonment of either description for seven years, and fine.	Ditto.
380	Thft in a building, tent, or vessel . . . .	Ditto.	Ditto.	Ditto.	Ditto.	Court of Session, or Magistrate of the first or second class.
381	Thft by clerk or servant of property in possession of master or employer.	Ditto.	Ditto.	Ditto.	Rigorous Imprisonment for ten years, and fine.	Court of Session.
382	Thft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing such theft, or to retiring after committing it, or to retaining property taken by it.	Ditto.	Ditto.	Ditto.		

*Of Extortion.*

	Extortion . . . . .	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
384	Extortion . . . . .				Imprisonment of either description for two years, or fine, or both.	Ditto.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for ten years, and fine.	Court of Session.
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for seven years, and fine.	Ditto.
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for ten years, and fine.	Ditto.
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for ten years.	Ditto.	Ditto.	Ditto.	Transportation for life.	Ditto.
389	If the offence threatened be an unnatural offence Putting person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for ten years, in order to commit extortion.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for ten years, and fine.	Ditto.
	If the offence be an unnatural offence . . . .	Ditto.	Ditto.	Ditto.	Transportation for life.	Ditto.

# OFFENCES AGAINST PROPERTY.

## CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—continued.

### Of Robbery and Dacoity.

1 Section	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
392	Robbery . . . . .	May arrest with- out warrant.	Warrant.	Not bailable.	Rigorous imprisonment for ten years, and fine.	Court of Session, or Magistrate of the first class.
393	If committed on the highway between sunset and sunrise.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for fourteen years, and fine.	Ditto.
394	Attempt to commit robbery . . . . .	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for seven years, and fine.	Ditto.
395	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person generally concerned in such robbery.	Ditto.	Ditto.	Ditto.	Transportation for life or rigorous imprisonment for ten years, and fine.	Ditto.
396	Dacoity . . . . .	Ditto.	Ditto.	Ditto.	Death, transportation for life, or rigorous imprisonment for ten years, and fine.	Court of Session. Ditto.
397	Murder in dacoity . . . . .	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for not less than seven years.	Ditto.
398	Robbery or dacoity with attempt to cause death or grievous hurt.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
399	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for not less than seven years.	Ditto.
400	Making preparation to commit dacoity . . . . .	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
401	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for ten years, and fine.	Ditto.
402	Belonging to a wandering gang of persons as- sociated for the purpose of habitually commit- ting thefts.	Ditto.	Ditto.	Ditto.	Transportation for life, or as above.	Ditto.
403	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto.	Ditto.	Ditto.	Rigorous imprisonment for seven years, and fine.	Ditto.

### Of Criminal Misappropriation of Property.

403	Dishonest misappropriation of moveable prop- erty, or converting it to one's own use.	Shall not arrest without war- rant.	Bailable.	Any Magistrate.
				Imprisonment of either de- scription for two years, or fine of Rs. 1000.

404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it. If by clerk or person employed by deceased .	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, and fine.  Imprisonment of either description for seven years, and fine.	Court of Session, or Magistrate of the first or second class.  Ditto.
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*Of Criminal Breach of Trust.*

406	Criminal breach of trust . . . .	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of first or second class.
407	Criminal breach of trust by a carrier, wharfinger, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for seven years, and fine.	Court of Session, or Magistrate of the first class.
408	Criminal breach of trust by a clerk or servant	Ditto.	Ditto.	Ditto.	Ditto.	Court of Session, or Magistrate of the first or second class.
409	Criminal breach of trust by public servant, or by banker, merchant, or agent, &c.	Shall not arrest without warrant.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session, or Magistrate of the first class.

*Of the receiving of Stolen Property.*

411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment for ten years, and fine.	Court of Session.
413	Habitually dealing in stolen property . . .	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—continued.

*Of the receiving of Stolen Property—continued.*

1 Section	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.

*Of Cheating.*

417	Cheating . . . . .	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
419 420	Cheating by personation . . . . . Cheating and thereby dishonestly inducing delivery of property, or the alteration or destruction of a valuable security.	Ditto. Ditto.	Ditto. Ditto.	Ditto. Ditto.	Ditto. Imprisonment of either description for seven years, and fine.	Ditto. Court of Session, or Magistrate of the first class.

*Of Fraudulent Deeds and Dispositions of Property.*

421	Fraudulent removal or concealment of property, &c., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
424	Fraudulent removal or concealment of property of himself or any other person, or assisting in so doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

# OFFENCES AGAINST PROPERTY.

Of Mischief.

	Mischief	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for three months, or fine, or both.	Any Magistrate.
426	Mischief	Ditto.	Warrant.	Ditto.	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
427	Mischief, and thereby causing damage to the amount of fifty rupees or upwards.	May arrest without warrant. (Act XI. of 1874.)	Ditto.	Ditto.	Ditto.	Ditto.
428	Mischief by killing, poisoning, maiming or rendering useless, any animal of the value of ten rupees or upwards.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for five years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
429	Mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of fifty rupees or upwards.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
430	Mischief by causing diminution of supply of water for agricultural purposes, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
431	Mischief by injury to public road, bridge, river or navigable channel, and rendering it impassable or less safe for travelling, or conveying property.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
432	Mischief by causing inundation or obstruction to public drainage attended with damage.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
433	Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for seven years, or fine, or both.	Court of Session.
434*	Mischief by destroying or moving, &c., a land-mark fixed by public authority.	Shall not arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.
435	Mischief by fire or explosive substance with intent to cause damage to amount of one hundred rupees or upwards.	May arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for seven years, and fine.	Court of Session.
436	Mischief by fire or explosive substance, with intent to destroy a house, &c.	Ditto.	Ditto.	Not Bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.
437	Mischief with intent to destroy or make unsafe a decked vessel, or a vessel of twenty tons burden.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for ten years, and fine.	Ditto.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—continued.  
Of Mischief—continued.

1 Section	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
438	The mischief described in the last section when committed by fire or any explosive substance.		Warrant.	Not bailable.	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session.
439	Running vessel ashore with intent to commit theft, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for ten years, and fine.	Ditto.
440	Mischief committed after preparation made for causing death or hurt, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for five years, and fine.	Ditto.

Of Criminal Trespass.

		May arrest with- out warrant.	Summons.	Bailable.	Imprisonment of either de- scription for three months, or fine of five hundred ru- pees, or both. Imprisonment of either de- scription for one year, or fine of one thousand rupees, or both.	Any Magistrate.
447	Criminal trespass . . . . .		Summons.	Bailable.	Imprisonment of either de- scription for three months, or fine of five hundred ru- pees, or both.	Any Magistrate.
448	House-trespass . . . . .	Ditto.	Warrant.	Ditto.	Imprisonment of either de- scription for one year, or fine of one thousand rupees, or both.	Ditto.
449	House-trespass in order to the commission of an offence punishable with death.	Ditto.	Ditto.	Not bailable.	Transportation for life, or rig- orous imprisonment for ten years, and fine.	Court of Session.
450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto.	Ditto.	Ditto.	Imprisonment of either de- scription for ten years, and fine.	Ditto.
451	House-trespass in order to the commission of an offence punishable with imprisonment.	Ditto.	Ditto.	Bailable.	Imprisonment of either de- scription for two years, and fine.	Any Magistrate.
	If the offence is theft . . . . .	Ditto.	Ditto.	Not bailable.	Imprisonment of either de- scription for seven years, and fine.	Court of Session, or Magistrate of the first or sec- ond class. Ditto.
452	House-trespass, having made preparation for causing hurt, assault, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

# OFFENCES AGAINST PROPERTY.

443	Lurking house-trespass or house-breaking	Ditto.	Ditto.	Ditto.	Imprisonment of either description for two years, and fine.	Magistrate of the first or second class.
444	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first or second class.
	If the offence is theft	Ditto.	Ditto.	Ditto.	Imprisonment of either description for ten years, and fine.	Ditto.
445	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Court of Session, or Magistrate of the first class.
446	Lurking house-trespass or house-breaking by night.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, and fine.	Court of Session, or Magistrate of the first or second class.
447	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for five years, and fine.	Ditto.
	If the offence is theft	Ditto.	Ditto.	Ditto.	Imprisonment of either description for fourteen years, and fine.	Ditto.
448	Lurking house-trespass or house-breaking by night after preparation made for causing hurt, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Court of Session, or Magistrate of the first class.
449	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for ten years, and fine.	Court of Session.
450	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
451	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for two years, or fine, or both.	Magistrate of the first or second class.
452	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.



CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

1	2	3	4	5	6	7
Section	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
465	Forgery . . . . .	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for two years, or fine, or both.	Court of Session.
466	Forgery of a record of a Court of Justice or of a Register of Births, &c., kept by a public servant.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for seven years, and fine.	Ditto.
467	Forgery of a valuable security, will, or authority to make or transfer any public security, or to receive any money, &c.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for ten years, and fine.	Ditto.
468	When the valuable security is a promissory note of the Government of India. Forgery for the purpose of cheating . . . . .	May arrest without warrant.	Ditto.	Ditto.	Ditto.	Ditto.
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	Shall not arrest without warrant.	Ditto.	Ditto.	Imprisonment of either description for seven years, and fine.	Ditto.
471	Using as genuine a forged document which is known to be forged.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for three years, and fine.	Ditto.
472	When the forged document is a promissory note of the Government of India. Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeited.	May arrest without warrant.	Ditto.	Not bailable.	Punishment for forgery.	Ditto.
473	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, &c.	Ditto.	Ditto.	Ditto.	Transportation for life, or imprisonment of either description for seven years, and fine.	Ditto.
474	Having possession of a document knowing it to be forged, with intent to use it as genuine, if the document is a valuable security or will	Ditto.	Ditto.	Ditto.	Imprisonment of either description for seven years, and fine.	Ditto.
		Ditto.	Ditto.	Ditto.	Transportation for life, or as above.	Ditto.

# OFFENCES RELATING TO DOCUMENTS, ETC.

475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto.	Ditto.	Ditto.	Ditto.
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto.	Ditto.	Ditto.	Ditto.
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting a will, &c.	Ditto.	Ditto.	Ditto.	Ditto.

## *Of Trade and Property-Marks.*

482	Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.
483	Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for two years, or fine, or both.	Ditto.
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.	Ditto.	Summons.	Ditto.	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first class.
485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, or fine, or both.	Ditto.
486	Knowingly selling goods marked with a counterfeit property or trade-mark.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.
487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three years, or fine, or both.	Court of Session, or Magistrate of the first or second class.
488	Making use of any such false mark . . .	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
489	Removing, destroying, or defacing any property-mark with intent to cause injury.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.

# OFFENCES RELATING TO MARRIAGE.

## CHAPTER XIX.—OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

1	2	3	4	5	6	7
Section	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Punishment under the Indian Penal Code.	By what Court triable.
490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons.	Bailable.	Imprisonment of either description for one month, or fine of one hundred rupees, or both.	Magistrate of the first or second class.
491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind, or disease, and voluntarily omitting to do so.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for three months, or fine of two hundred rupees, or both.	Ditto.
492	Being bound by a contract to render personal service for a certain period at a distant place to which the employé is conveyed at the expense of the employer, and there voluntarily deserting the service or refusing to perform the duty.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for one month, or fine of double the expense incurred, or both.	Ditto.

## CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.

		Shall not arrest without warrant.	Warrant.	Not bailable.	Imprisonment of either description for ten years, and fine.	Court of Session.
493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him in that belief.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for seven years, and fine.	Ditto.
494	Marrying again during the life-time of a husband or wife.	Ditto.	Ditto.	Not bailable.	Imprisonment of either description for ten years, and fine.	Ditto.
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for seven years, and fine.	Ditto.
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Ditto.	Ditto.	Bailable.	Imprisonment of either description for five years, or fine, or both.	Ditto.
497	Adultery . . . . .	Ditto.	Ditto.	Ditto.	Imprisonment of either description for two years, or fine, or both.	Ditto.
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto.	Ditto.	Ditto.	Magistrate of the first or second class.	

CHAPTER XXI.—OF DEFAMATION.

500	Defamation . . . . .	Shall not arrest without warrant.	Warrant.	Bailable.	Simple imprisonment for two years, or fine, or both.	Court of Session, or Magistrate of the first class.
501	Printing or engraving matter knowing it to be defamatory.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

CHAPTER XXII.—OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant.	Bailable.	Imprisonment of either description for two years, or fine, or both.	Any Magistrate.
505	False statement, rumours, &c., circulated with intent to cause mutiny or offences against the public peace.	Ditto.	Ditto.	Not bailable.	Ditto.	Magistrate of the first or second class.
506	Criminal intimidation . . . . .	Ditto.	Ditto.	Bailable.	Ditto.	Ditto.
	If threat be to cause death or grievous hurt, &c.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for seven years, or fine, or both.	Court of Session, or Magistrate of the first class.
507	Criminal intimidation by anonymous communication, or having taken precaution to conceal whence the threat comes.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for two years, in addition to the punishment under above section.	Ditto.
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto.	Ditto.	Ditto.	Imprisonment of either description for one year, or fine, or both.	Magistrate of the first or second class.
509	Uttering any word or making any gesture intended to insult the modesty of a woman.	Ditto.	Ditto.	Ditto.	Simple imprisonment for one year, or fine, or both.	Magistrate of the first class.
510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	Ditto.	Ditto.	Ditto.	Simple imprisonment for twenty-four hours, or fine of ten rupees, or both.	Any Magistrate.

CHAPTER XXIII.—OF ATTEMPTS TO COMMIT OFFENCES.

1 Section	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the Police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.	According as the offence contemplated by the offender is bailable or not.	Transportation or imprisonment not exceeding half of the longest term and of the description provided for the offence, or fine, or both.	By the Court of which the offence attempted is triable.

OFFENCES AGAINST OTHER LAWS.

		May arrest without warrant. Ditto.	Warrant. Ditto. Summons. Ditto.	Not bailable. Ditto. Bailable. Ditto.	..... ..... ..... .....	According to the provisions of Section 8 of this Code.
If punishable with death, transportation, or imprisonment for seven years, or upwards.						
If punishable with imprisonment for three years and upwards, but less than seven.						
If punishable with imprisonment for less than three years.		Shall not arrest without warrant.				
If punishable with fine only . . . . .		Ditto.				

ACTS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

SCHEDULE V.

*Acts of the Governor General of India in Council.*

Acts and Sections containing reference.	Section or Chapter of the former Code quoted.	Section or Chapter of this Code to be substituted.
XVIII. of 1864, s. 19	61 . . . . .	307
XXI. of 1864, s. 2	62 . . . . .	518
	63 . . . . .	519
	308 . . . . .	521
	309 . . . . .	522
	310 . . . . .	523
	311 . . . . .	525
	312 . . . . .	526
	313 . . . . .	527
	314 . . . . .	528
XXII. of 1864, ss. 3 and 5	23 . . . . .	37
XIII. of 1865, s. 29	Chap. XIII. . . . .	Chapter XXXIII.
s. 35 . . . . .	Sections 336 to 340 (both inclusive).	407, 409, 410, 411, and 412.
s. 39 . . . . .	380 . . . . .	287
s. 40 . . . . .	Chap. XXVI. . . . .	Chapter XXXIV.
s. 41 . . . . .	383 . . . . .	301
XIX. of 1865, s. 9	23 . . . . .	37
IV. of 1866, s. 30	Sections 336 to 340 (both inclusive).	407, 409, 410, 411, and 412.
s. 33 . . . . .	380 . . . . .	287
s. 34 . . . . .	Chap. XXVI. . . . .	Chapter XXXIV.
s. 35 . . . . .	385 . . . . .	305
XXIV. of 1866, s. 11	Sections 336 to 340 (both inclusive).	407, 409, 410, 411, and 412.
s. 14 . . . . .	380 . . . . .	287
s. 15 . . . . .	Chap. XXVI. . . . .	Chapter XXXIV.
s. 16 . . . . .	385 . . . . .	305
III. of 1867, s. 17	61 . . . . .	307
XV. of 1867, s. 19	61 . . . . .	307
XXII. of 1867, s. 14	61 . . . . .	307
XXIII. of 1867, s. 5	Sections 248 to 255 (both inclusive).	149, Chapter XVII. and the provisions applicable to war- rant cases.
s. 6 . . . . .	334 and 335 . . . . .	405 and 406
I. of 1868, s. 5 . . . . .	61 . . . . .	307
VI. of 1868, s. 19	308 . . . . .	521
	and Chap. XX. . . . .	521 to 529 (both in- clusive).
s. 35 . . . . .	61 . . . . .	307
XIII. of 1869, s. 2	198 . . . . .	338 and 339
	and 364 . . . . .	334, 335, 337, 338, 339, and 340.

# ACTS OF THE GOVERNOR OF MADRAS IN COUNCIL.

## SCHEDULE V.—*Continued.*

### *Acts of the Governor General of India in Council—continued.*

Acts and Sections containing reference.	Section or Chapter of the former Code quoted.	Section or Chapter of this Code to be substituted.
XVIII. of 1869, s. 18 cl. (b)	Chap. XXII. . . . .	Chapter XL.
XXI. of 1869, s. 30	Chap. XIX. . . . .	Chapter XXXVIII.
VIII. of 1870, s. 6	61 . . . . . and 316 . . . . .	307 536
IX. of 1871, sch. II., No. 46	Chap. XXII. . . . .	Chapter XL.

### *Acts of the Governor of Madras in Council.*

Acts and Sections containing reference.	Section or Chapter of the former Code quoted.	Section or Chapter of this Code to be substituted.
III. of 1864, s. 23	Chap. VIII. . . . .	Chapter XXVII. and sections 415 to 420 (both inclusive).
X. of 1865, s. 116	Chap. XX. . . . .	Sections 521 to 529 (both inclusive).
I. of 1866, ss. 3 and 5	s. 23 . . . . .	37
I. of 1867, s. 1 .	Chap. I. . . . .	Chapter I.
VIII. of 1867, s. 4	ss. 68 . . . . . 97 . . . . . 127 . . . . . 128 . . . . . 129 . . . . . 130 . . . . . 131 . . . . . 132 . . . . . 133 . . . . . 137 . . . . . 152 . . . . . 153 . . . . . 97 . . . . .	142 183 377 378 381 415 416 417 109 and 110. 117 (first clause). 124 125 183
s. 9 . . .	Chap. IV. . . . .	Sections 139, 140, 144, 141, 147, 142, and Chapter XII.

ACTS OF THE GOVERNOR OF MADRAS IN COUNCIL.

SCHEDULE V.—*Continued.*

*Acts of the Governor of Madras in Council—continued.*

Acts and Sections containing reference.	Section or Chapter of the former Code quoted.	Section or Chapter of this Code to be substituted.
VIII. of 1867, s. 9	Chap. V. . . . .	Sections 159, 161, 163, 164, 165, 166, 91, 167, 168, 169, 170, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, and 185.
	Chap. VI. . . . .	Sections 92, 94, 95, 96, 97, 98, 99, 100, 93, 101, 108, and 480.
	Chap. VII. . . . .	Section 92, Clause sixth, latter part.
	Chap. VIII. . . . .	Chapter XXVII. and Sections 415 to 420 (both inclusive).
	Chap. IX. . . . .	Sections 109, 110, 111, 114, 116, 117 first part, 89, 112, 102, 103, 379, 380, 118, 119, 120, 121, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, and 136.
	With the exception of sections	
	125 . . . . .	385
	147 . . . . .	121
	148 . . . . .	} Re-enacted in Act No. I. of 1872 (Evidence Act).
	149 . . . . .	
	150 . . . . .	
	154 . . . . .	126
	158 . . . . .	130
	160 . . . . .	132
	161 . . . . .	133
	151 . . . . .	123
III. of 1871, s. 132	Chap. XX. . . . .	Sections 521 to 529 (both inclusive).



# ACTS OF THE LIEUTENANT GOVERNOR OF BENGAL IN COUNCIL.

## SCHEDULE V.—*Continued.*

### *Acts of the Governor of Bombay in Council.*

Acts and Sections containing reference.	Section or Chapter of the former Code quoted.	Section or Chapter of this Code to be substituted.
VI. of 1862, s. 18	61 . . . . .	307
III. of 1867, ss. 4 and 6	23 . . . . .	37
II. of 1868, s. 15	61 . . . . .	307

### *Acts of the Lieutenant Governor of Bengal in Council.*

Acts and Sections containing reference.	Section or Chapter of the former Code quoted.	Section or Chapter of this Code to be substituted.
II. of 1863, s. 7 .	61 . . . . .	307
VI. of 1863, s. 238	61 . . . . .	307
III. of 1864, s. 6 .	23 . . . . .	37
s. 80 . . . . .	61 . . . . .	307
VII. of 1864, s. 28	Chap. VIII. . . . .	Chapter XXVII. and Sections 415 to 420 (both inclusive).
IV. of 1865, s. 4	Chap. XV. . . . .	Chapter XVI. and the provisions applicable to summons cases.
II. of 1866, s. 48	s. 61 . . . . .	307
V. of 1866, s. 51	s. 61 . . . . .	307
II. of 1867, s. 14	s. 61 . . . . .	307
III. of 1867, s. 17	s. 61 . . . . .	307
V. of 1867, s. 4	s. 61 . . . . .	307
IV. of 1871, s. 19	Chap. XV. . . . .	Chapter XVI. and the provisions applicable to summons cases.

H. S. CUNNINGHAM,

*Officiating Secretary to the Council of the Governor General for making Laws and Regulations.*

# A P P E N D I X



## A P P E N D I X .

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ACT No. XXIV. OF 1855.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor-General on the 13th August 1855.)

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AN ACT to substitute Penal Servitude for the punishment of Transportation in respect of European and American Convicts, and to amend the Law relating to the removal of such Convicts.

*Preamble.*—Whereas, by reason of the difficulty of providing a place to which Europeans or Americans can, with safety to their health, be sent for the purpose of undergoing sentences of transportation or of imprisonment for long terms, it has become expedient to substitute other punishment for that of transportation, and to amend the law relating to the removal of European and American convicts for the purpose of imprisonment : It is enacted as follows :

1. *No European or American to be sentenced to Transportation.*—No European or American shall be liable to be sentenced or ordered, by any Court within the territories in the possession and under the Government of India, to be transported.

2. *Terms of Penal Servitude instead of the present Terms of Transportation.*—Any person who, but for the passing of this Act, would, by any law now in force, or which may hereafter be in force, in any part of the said territories, be liable to be sentenced or ordered, by any such Court, to be transported, shall, if a European or American, be liable to be sentenced or ordered to be kept in penal servitude for such terms as hereafter mentioned. The terms of penal servitude to be awarded by any sentence or order, instead of the term of transportation to which any such offender would, but for the passing of this Act, be liable, shall be as follows : (that is to say)—

Instead of transportation for seven years, or for a term not exceeding seven years, penal servitude for the term of four years.

Instead of any term of transportation exceeding seven years, and not exceeding ten years, penal servitude for any term not less than four and not exceeding six years.

Instead of any term of transportation exceeding ten years and not exceeding fifteen years, penal servitude for any term not less than six and not exceeding eight years.

Instead of any term of transportation exceeding fifteen years, penal servitude for any term not less than six and not exceeding ten years.

## BREACH OF CONTRACTS.—ADEN.

Instead of transportation for the term of life, penal servitude for the term of life. And in every case, where, at the discretion of the Court, one of any two or more of the terms of transportation hereinbefore mentioned might have been awarded, the Court shall have the like discretion to award one of the two or more terms of penal servitude hereinbefore mentioned, in relation to such terms of transportation.

3. *Discretion of Courts as to alternative Punishments not to be affected.*—Provided always, that nothing herein contained shall interfere with or affect the authority or discretion of any Court in respect of any punishment which such Court may now award or pass on any offender other than transportation; but where such other punishment may be awarded at the discretion of the Court instead of transportation or in addition thereto, the same may be awarded instead of, or (as the case may be) in addition to, the punishment substituted for transportation by this Act.

4. *Effect of Pardon granted upon condition of Penal Servitude.*—If any offender sentenced by any Court within the said territories to the punishment of death shall have mercy extended to him, upon condition of his being kept in penal servitude for life, or for any term of years, all the provisions of this Act shall be applicable to such offender in the same manner as if he had been lawfully sentenced under this Act to the term of penal servitude specified in the condition. Sections 5, 6, 7, 9, 10, 11, and 12 are repealed by Act v. of 1871, and sections 8 and 16 by Acts xii. of 1867, and xiv. of 1870.

13. *Act not to affect the Provisions of certain English Statutes.*—Nothing in this Act is intended to alter or affect the provisions of the 12th and 13th Victoria Chapter 43, or any Act of Parliament passed in the United Kingdom of Great Britain and Ireland since the 28th of August 1833, or which may hereafter be passed.

14. *What to be deemed Proof that a Person is a European or an American.*—Any sentence or order upon any person, describing him as a European or American, shall be deemed, for the purposes of this Act, to be conclusive of the fact that such person is a European or American within the meaning of this Act.

15. *Construction of Act.*—The word “European,” as used in this Act, shall be understood to include any person usually designated a European British subject. Words in the singular number, or the masculine gender, shall be understood to include several persons, as well as one person, and females as well as males, unless there be something in the context repugnant to such construction.

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### ACT No. XIII. OF 1859.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor-General on the 4th of May 1859.)

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AN ACT to provide for the punishment of breaches of contract by Artificers, Workmen, and Labourers in certain cases.

*Preamble.*—Whereas much loss and inconvenience are sustained by manufacturers, tradesmen, and others in the several Presidency towns of Calcutta, Madras, and Bombay, and in other places, from fraudulent breach of contract

on the part of artificers, workmen, and labourers who have received money in advance on account of work which they have contracted to perform; and whereas the remedy by suit in the Civil Courts for the recovery of damages is wholly insufficient, and it is just and proper that persons guilty of such fraudulent breach of contract should be subject to punishment; it is enacted as follows:—

1. *If Workman neglect to perform Work, on account of which he has received an advance of Money, complaint may be made to the Magistrate.*—When any artificer, workman, or labourer shall have received from any master or employer, resident or carrying on business in any Presidency town, or in any station of the Settlement of Prince of Wales' Island, Singapore, or Malacca, or from any person acting on behalf of such master or employer, an advance of money on account of any work which he shall have contracted to perform, or to get performed by any other artificers, workmen, or labourers, if such artificer, workman, or labourer shall wilfully and without lawful or reasonable excuse neglect, or refuse to perform, or get performed such work, according to the terms of his contract, such master, or employer, or any such person as aforesaid, may complain to a Magistrate of Police, and the Magistrate shall thereupon issue a summons or a warrant, as he shall think proper, for bringing before him such artificer, workman, or labourer, and shall hear and determine the case.

*Note.*—A labourer agreed to serve the prosecutor in consideration of money due from him on account of previous debts. He served for three months only, and then quitted service. The High Court held that he was not liable to be dealt with criminally, the breach of contract not being fraudulent within the meaning of this Act, and no money in advance having been received.—*Reg. v. Jethya valad Vestya*, 9 Bom. H.C.R. 171. A breach of contract to supply wood, although an advance be made, does not fall within the purview of this Act.—*Upper Assam Tea Co. v. Thopoor*, 4 B.L.R., App. 1. This Act does not apply to contracts for chakri (domestic or personal service)—*in re Domestic Servants*, 3 B.L.R. A. Cr. J. 32; nor does it apply where an advance has not only been worked off by a labourer, but there is an actual balance due to him—*Lara Doss Bhuttacharjee v. Bhaloo Sheikh*, 8 W.R. Crim. 69. Where a labourer received an advance of Rs. 95 from a cultivator in wynaad, and bound himself to work for the cultivator till repayment, it was ruled by the High Court, on breach by labourer and complaint from cultivator, that the contract was not within the Act. This was a reference to the High Court by a district magistrate of an order by a subordinate magistrate directing the labourer to perform the work according to the terms of his contract. The order was referred as illegal, on the grounds that it sanctioned a species of slavery; and the High Court, in making the above-mentioned ruling, said, "A construction of the Act must not be adopted which would enforce a contract in the violation of a law of a more stringent character."—7 Mad. H.C.R. App. 30.

Where a labourer contracted with the manager of a silk factory, for a money consideration, to work at the factory for four months in a year for three successive years, and after receiving an advance of wages on account of the contract, broke the terms of his contract, he was held liable to a prosecution under this Act.—*Koonjobehary Lall v. Raja Doonmey*, 14 W.R. Crim. 29. It has been ruled that gold and silver money, given to an artificer as raw material to make the article contracted for (an idol), is an advance of money within the meaning of this section. In this case the court said, "The fact that the money was perhaps—and this is not clear—to be used as raw material, does not, in their opinion, prevent it being an advance."—6 Mad. H.C.R. App. 24. It seems somewhat difficult to determine on what grounds this ruling was based. This Act extends to coolies in Assam who have received advances on account of work to be done.—*Reg. v. Gaub Gorab Cacharee*, 8 W.R. Crim. 6.

The words "or in any station of the Settlement of Prince of Wales' Island, Singapore, and Malacca," stood originally in this section after the words Presidency town, but were repealed by Act xvi. of 1874.

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2. *Magistrate may order re-payment of Advance, or performance of Contract.—Penalty if Workman fail to comply with the Order.*—If it shall be proved to the satisfaction of the Magistrate that such artificer, workman, or labourer, has received money in advance from the complainant on account of any work, and has wilfully and without lawful or reasonable excuse neglected, or refused to perform, or get performed the same, according to the terms of his contract, the Magistrate shall, at the option of the complainant, either order such artificer, workman, or labourer to repay the money advanced, or such part thereof as may seem to the Magistrate just and proper, or order him to perform, or get performed such work, according to the terms of his contract; and if such artificer, workman, or labourer shall fail to comply with the said order, the Magistrate may sentence him to be imprisoned with hard labour for a term not exceeding three months, or if the order be for the repayment of a sum of money, for a term not exceeding three months, or until such sum of money shall be sooner repaid; provided that no such order for the repayment of any money shall, while the same remains unsatisfied, deprive the complainant of any civil remedy by action or otherwise which he might have had but for this Act.

An order of a Magistrate under this section, "That the prisoner should work for a certain period, and in case he failed to do so should suffer rigorous imprisonment for one month," was annulled as to the latter part, as the Magistrate had no power to make that order until the failure had occurred and been proved to him.—*Reg. v. Jooma bin Balu*, 4 Bom. H.C.R.C.C. 37 and 6 Mad. H.C.R. App. 24.

3. *Magistrate may require Workman to give Security for due performance of Order.*—When the Magistrate shall order any artificer, workman, or labourer to perform or get performed any work, according to the terms of his contract, he may also, at the request of the complainant, require such artificer, workman, or labourer to enter into a recognizance with sufficient security for the due performance of the order; and in default of his entering into such recognizance, or furnishing such security to the satisfaction of the Magistrate, may sentence him to be imprisoned with hard labour for a period not exceeding three months.

4. *To what Contracts the Act extends.*—The word "contract," as used in this Act, shall extend to all contracts and agreements, whether by deed, or written, or verbal, and whether such contract be for a time certain, or for specified work, or otherwise.

5. *Act may be extended by Government.*—This Act may be extended by the Governor-General of India in Council, or by the Executive Government of any Presidency or place, to any place within the limits of their respective jurisdictions. In the event of this Act being so extended, the powers hereby vested in a Magistrate of Police shall be exercised by such officer or officers as shall be specially appointed by Government to exercise such powers.

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### ACT No. II. of 1864.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 12th February 1864.)

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### AN ACT to provide for the administration of Civil and Criminal Justice at Aden.

*Preamble.*—Whereas the administration of Civil and Criminal Justice at Aden is now entrusted to the Resident, and in subordination to him to the Assistant

## ADEN CRIMINAL JUSTICE ACT.

Resident; and whereas Her Majesty has, by Her Letters Patent, dated the 22d June 1860, appointed the Resident at Aden to be Judge of Her Majesty's Vice-Admiralty Court at Aden for the purposes of and according to the provisions of the Statute 12 and 13 Vict. c. 84; and whereas the Criminal law to be administered at Aden is provided for by the Indian Penal Code, but the law to be administered at Aden in Civil matters, and the precise nature of the Criminal and Civil jurisdiction of the Resident, and the proper course of Procedure in his Court, have never been defined, and it is expedient that they should be provided for; and whereas at present judgments and proceedings of the Resident at Aden are not subject to the superintendence or revision of any Court of Justice, except so far as they are subject to appeal to Her Majesty in Council, and it is expedient to provide for the superintendence or revision of certain of such judgments and proceedings by the High Court at Bombay: It is enacted as follows:—

1. *Interpretation.*—The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant thereto, that is to say:—

“*Resident.*”—The word “Resident” denotes the Chief Civil Officer at Aden appointed by the Government by whatever designation such officer may be called, and includes any Acting Resident or officer acting temporarily as such Chief Civil Officer.

“*Assistant Resident.*”—The words “Assistant Resident” denote any officer appointed by the Government to assist the Resident at Aden by whatever designation such officer may be called, and includes an Acting Assistant.

“*Court of the Resident.*”—The words “Court of the Resident” include the Court of any Assistant Resident.

*Number.*—Words importing the singular number include the plural number, and words importing the plural number include the singular number.

*Gender.*—Words importing the masculine gender include females.

### *Criminal Jurisdiction.*

17. *Administration of Criminal Justice vested in Court of the Resident, subject to proviso.*—The administration of Criminal Justice at Aden is hereby declared to be vested in the Court of the Resident, save as is herein otherwise provided.

18. *Governor of Bombay may give Assistant Residents certain powers.*—The Governor of Bombay in Council may invest any Assistant Resident with the powers of a Magistrate, or of a Subordinate Magistrate of the first or second class as described in the Code of Criminal Procedure, and such Assistant Resident shall exercise such powers under the said Code, but subject to the provisions of this Act.

19. *Appeal from Assistant Resident to Resident, in what cases.*—In every case tried by an Assistant Resident in which the punishment awarded shall be imprisonment for a period exceeding six months, with or without fine, or shall be only a fine exceeding five hundred Rupees, an appeal shall lie from the sentence of the Assistant Resident to the Resident. No appeal shall lie from the sentence of an Assistant Resident in any case in which the punishment awarded shall be imprisonment for a period not exceeding six months, with or without fine, or shall be only a fine not exceeding five hundred Rupees; but the Resident may in all cases, within the period allowed for appeal in appealable cases, call for any proceedings whatever of the Assistant Resident at any stage thereof, and may pass such order thereon as he may think fit.

20. *Resident to exercise powers of Court of Session, and also of a Magistrate.*—The Resident shall, except as in this Act is otherwise provided, exercise all the powers of a Court of Session as defined in the Code of Criminal Procedure, and he may also, when it shall seem to him proper so to do, exercise the powers of



## ADEN CRIMINAL JUSTICE ACT.

a Magistrate as defined in the said Code, except in cases triable before himself as a Court of Session.

21. *As a Court of Session to hold Gaol Deliveries.*—The Resident in the exercise of his powers as a Court of Session shall hold gaol deliveries at convenient periods, of which due notice shall be given, for the trial of all persons charged with offences punishable under the Indian Penal Code, or under any other law in force for the time being, who may be committed to take their trial before him as a Court of Session. Provided that the Resident shall not have power to try any European British subject charged with an offence punishable with death under the said Code. The commitment of any European British subject charged with any such offence shall be made to High Court at Bombay. In all other cases the commitments made within the limits of the jurisdiction of the Court of the Resident for offences punishable under the Indian Penal Code, shall be made to the Court of the Resident.

22. *Commitment and Trial of such Subjects, when charged with Offences other than those Punishable with Death.*—If any European British subject shall be charged in Aden with any offence (other than an offence punishable with death under the Indian Penal Code) which a Justice of the Peace shall not be competent to punish, and there shall be sufficient grounds for committing him for trial, such European British subject shall be committed to the Court of the Resident, and shall be tried by the Resident.

### *Criminal Procedure.*

23. *Proceedings in Criminal Cases how to be regulated.*—Save as in this Act otherwise provided, the proceedings in all Criminal cases of any description brought in any Court in Aden shall be regulated by the Code of Criminal Procedure.

24. *Trial of European or American by the Resident to be by Jury.*—Criminal trials before the Resident as a Court of Session, in which a European (whether a British subject or not) or an American is the accused person, or one of the accused persons, shall be by jury, and in such case the jury, if such European or American shall desire it, shall consist of at least one-half Europeans or Americans, if such a jury can be procured.

25. *List of Jurors.*—The Resident shall from time to time prepare and make out in alphabetical order a list of persons residing at Aden who are in the judgment of the Resident qualified from their education and character to serve as jurors. The list shall contain the names, places of abode, and quality or business of every such person, and shall mention the race to which he belongs.

26. *Publication of List.*—Copies of such list shall be stuck up in the Court of the Resident, and every such copy shall have subjoined to it a notice stating that objections to the list will be heard and determined by the Resident at a time and place mentioned in the notice.

27. *Provisions of Criminal Procedure Code to apply to Jurors.*—*Persons in Military Service not exempted from serving as Jurors.*—All the provisions of the Criminal Procedure Code as to Jurors, and the list of jurors shall be applied, so far as the same can be applied respectively, to jurors and the list of jurors under this Act: provided that no person shall be exempt from the liability to serve as a juror on the ground only of his being in the military service: provided also that the jurors shall be summoned by the Resident.

28. *Execution or Commutation of Sentence of Death.*—If on any trial sentence of death shall be passed by the Resident, such sentence shall not be carried into execution until it shall have been confirmed by the High Court at Bombay. It shall be lawful for the High Court at Bombay, in any case in which it shall seem proper so to do, to commute a sentence of death to a sentence of transportation for life, or for any shorter period not less than seven years.

29. *No Appeal from Order of Resident, but he may reserve points for High Court.*

## WHIPPING.

—No appeal shall lie from an order or sentence passed by the Resident in any criminal case. But it shall be at the discretion of the Resident to reserve any point or points of law for the opinion of the said High Court.

30. *Review of Case by High Court.*—On such point or points of law being so reserved as in the last preceding Section mentioned, or on its being certified by the Advocate-General at Bombay that in his judgment there is an error in the decision of a point or points of law decided by the Resident, or that a point of law decided by the said Resident should be further considered, the said High Court shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point of law, and thereupon to pass such judgment and sentence as to the said High Court shall seem right.

### *General Rules.*

31. *High Court to frame Rules for Resident's Court.*—The High Court at Bombay shall have power to make and issue general rules for regulating the practice and proceedings of the Court of the Resident, and also to frame forms for every proceeding in the said Court for which the said High Court shall think it necessary that a form should be provided, for keeping all books, entries, and accounts to be kept by the officers, and for the preparation and submission of any statements to be prepared and submitted by the Court of the Resident, and from time to time to alter any such rule or form : provided that such rules and forms shall not be inconsistent with the provisions of this Act, or of any other law in force.

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## ACT No. VI. OF 1864.

PASSED BY THE GOVERNOR-GENERAL IN COUNCIL.

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(Received the assent of the Governor-General in Council on the 18th February 1864.)

*Preamble.*—Whereas it is expedient that in certain cases offenders should be liable under the provisions of the Indian Penal Code to the punishment of whipping : It is enacted as follows :—

1. In addition to the punishments described in Section 53 of the Indian Penal Code, offenders are also liable to whipping under the provisions of the said Code.

2. *Offences punishable with Whipping in lieu of any other Punishment prescribed by Penal Code.*—Whoever commits any of the following offences, may be punished with whipping, in lieu of any punishment to which he may for such offence be liable under the Indian Penal Code, that is to say :—

(1.) Theft, as defined in Section 378 of the said Code.

(2.) Theft in a building, tent, or vessel, as defined in Section 380 of the said Code.

(3.) Theft by a clerk or servant, as defined in Section 381 of the said Code.

(4.) Theft after preparation for causing death or hurt, as defined in Section 382 of the said Code.

(5.) Extortion by threat, as defined in Section 388 of the said Code.

(6.) Putting a person in fear of accusation in order to commit extortion, as defined in Section 389 of the said Code.

(7.) Dishonestly receiving stolen property, as defined in Section 411 of the said Code.

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(8.) Dishonestly receiving property stolen in the commission of a dacoity, as defined in Section 412 of the said Code.

(9.) Lurking house-trespass, or house-breaking, as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

(10.) Lurking house-trespass by night, or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

*Note.*—Under Section 20 of the Criminal Procedure Code, (p. 478), magistrates of the first and second class can pass sentences of whipping; magistrates of the third class cannot.

3. *On Second Conviction of any Offence mentioned in last Section, Whipping may be added to other Punishment.*—Whoever, having been previously convicted of any one of the offences specified in the last preceding Section, shall again be convicted of the same offence, may be punished with whipping, in lieu of, or in addition to, any other punishment, to which he may for such offence be liable under the Indian Penal Code.

*Note.*—The first conviction must be for the same offence as the second. A conviction for theft on the first occasion, and one for house-breaking by night with intent to commit theft on the second, will not come within the terms, "again convicted of the same offence."—Madras H.C. Rulings, 21st March 1868, 3 Madras Jurist 244; and see Reg. v. Changia valad Shumia, 7 Bom. H.C.R.C. 68. A person who is convicted at one time on two or more charges of the same offence, not having, previously to that time, been convicted of the same offence, does not come within the meaning of the words "previously convicted," used in this section. It is therefore illegal to sentence him to whipping for one of these offences *in addition* to imprisonment or fine for the other or others; but it is not illegal to sentence him to *one* whipping *in lieu* of all other punishment, if the offence of which he is convicted be one of those enumerated in Section 2. Where, however, a person who has been previously convicted within the meaning of this section is convicted at one time on two or more charges of the same offence as that of which he had been previously convicted, he can only receive *one* sentence of whipping *in addition* to any other punishment to which he may be liable. This was the decision of the majority of the full High Court at Calcutta.—Nassir v. Chunder and others, 5 R.C.C. Cr. 45, and 5 R.C.C. Circ. 9, and 9 W.R. Crim. 41; see also Reg. v. Uday Putnaick, 12 W.R. Crim 68; Rutton Bewa v. Buhur, 14 W.R. Crim. 7.

This section applies to juveniles as well as to adult offenders.—Reg. v. Kusa valad Lakshman, 7 Bom. H.C.R.C.C. 70.

Before flogging is given as an additional punishment, there ought to be formal evidence on the record of the previous conviction relied upon, and the identity of the prisoner ought to be proved in the regular way.—Reg. v. Nuzee Nushyo, and Reg. v. Sheikh Ramzan, 15 W.R. Crim. 52, 53.

4. *Offences punishable, in case of Second Conviction, with Whipping, in addition to other Punishment.*—Whoever, having been previously convicted of any one of the following offences, shall be again convicted of the same offence, may be punished with whipping, in addition to any other punishments to which he may be liable under the Indian Penal Code, that is to say :—

(1.) Giving or fabricating false evidence, in such manner as to be punishable under Section 193 of the Indian Penal Code.

(2.) Giving or fabricating false evidence, with intent to procure conviction of a capital offence, as defined in Section 194 of the said Code.

(3.) Giving or fabricating false evidence, with intent to procure conviction of an offence punishable with transportation or imprisonment, as defined in Section 195 of the said Code.

(4.) Falsely charging any person with having committed an unnatural offence, as defined in Sections 211 and 377 of the said Code.

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(5.) Assaulting or using criminal force to any woman, with intent to outrage her modesty, as defined in Section 354 of the said Code.

(6.) Rape, as defined in Section 375 of the said Code.

(7.) Unnatural offences, as defined in Section 377 of the said Code.

(8.) Robbery or dacoity, as defined in Sections 390 and 391 of the said Code.

(9.) Attempting to commit robbery, as defined in Section 393 of the said Code.

(10.) Voluntarily causing hurt in committing robbery, as defined in Section 394 of the said Code.

(11.) Habitually receiving or dealing in stolen property, as defined in Section 413 of the said Code.

(12.) Forgery, as defined in Section 463 of the said Code.

(13.) Forgery of a document, as defined in Section 466 of the said Code.

(14.) Forgery of a document, as defined in Section 467 of the said Code.

(15.) Forgery for the purpose of cheating, as defined in Section 468 of the said Code.

(16.) Forgery for the purpose of harming the reputation of any person, as defined in Section 469 of the said Code.

(17.) Lurking house-trespass, or house breaking, as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section.

5. *Juvenile Offenders*.—Any juvenile offender who commits any offence which is not by the Indian Penal Code punishable with death, may, whether for a first or any other offence, be punished with whipping, in lieu of any other punishment to which he may for such offence be liable under the said Code.

*Note*.—A juvenile offender means a person under the age of 16 years. See Section 311 of the Criminal Procedure Act Code, p. 642.

6. *Frontier Districts and Wild Tracts*.—Whenever any Local Government shall, by notification in the Official Gazette, have declared the provisions of this section to be in force in any frontier district, or any wild tract of country within the jurisdiction of such Local Government, any person who shall in such district, or tract of country, after such notification, as aforesaid, commit any of the offences specified in Section 4 of this Act, may be punished with whipping, in lieu of any other punishment to which he may be liable under the Indian Penal Code.

7. *Exemption of Females*.—No female shall be punished with whipping, nor shall any person who may be sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years, be punished with whipping.

8, 11 and 12 are repealed by Act x. of 1872, the Criminal Procedure Code, and Sections 312, 313 of that Code substituted. These substituted sections differ but little from those repealed. Sections 9 and 10 are repealed by Act xvi. of 1874. Sections 310 and 311 of the Criminal Procedure Code are almost verbatim re-enactments of these repealed sections.

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### ACT No. XV. OF 1865.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 7th of April 1865.)

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AN ACT to define and amend the laws relating to Marriage and Divorce among the Parsees.

*Preamble*.—Whereas the Parsee community has represented the necessity of defining and amending the law relating to marriage and divorce among Parsees :

## PARSEE MARRIAGE ACT.

And whereas it is expedient that such law should be made conformable to the customs of the said community : It is enacted as follows :—

### I. Preliminary.

1. *Short Title.*—This Act may be cited as “The Parsee Marriage and Divorce Act, 1865.”

2. *Interpretation Clause.*—In this Act, unless there be something repugnant in the subject or context—

*Number.*—Words in the singular number include the plural, and words in the plural number include the singular.

*Priest.*—“Priest” means a Parsee Priest, and includes Dastúr and Mobed.

*Marriage.—Husband and Wife.*—“Marriage” means a marriage between Parsees, whether contracted before or after the commencement of this Act ; and “husband” and “wife” respectively mean a Parsee husband and a Parsee wife.

*Section.*—“Section” means a section of this Act.

*Chief Justice.*—“Chief Justice” includes Senior Judge.

*Court.*—“Court” means a Court constituted under this Act.

*British India.*—“British India” means the territories which are or shall be vested in Her Majesty or her successors by the Statute 21 & 22 Vict., cap. 106, entitled “An Act for the better Government of India.”

*Local Government.—High Court.*—And, in any part of British India in which this Act operates, “Local Government” means the person authorized to administer Executive Government in such part of India, or the Chief Executive Officer of such part, when it is under the immediate administration of the Governor-General of India in Council, and when such officer shall be authorized to exercise the powers vested by this Act in a Local Government ; and “High Court” means the highest Civil Court of Appeal in such part.

### II. Of Marriages between Parsees.

3. *Requisites to validity of Parsee Marriages.*—No Marriage contracted after the commencement of this Act shall be valid, if the contracting parties are related to each other in any of the degrees of consanguinity or affinity prohibited among Parsees, and set forth in a table which the Governor-General of India in Council shall, after due inquiry, publish in the Gazette of India, and, unless such marriage shall be solemnized according to the Parsee form or ceremony called “Asírvád,” by a Parsee Priest, in the presence of two Parsee witnesses, independently of such officiating Priest ; and unless, in the case of any Parsee who shall not have completed the age of twenty-one years, the consent of his or her father or guardian, shall have been previously given to such marriage.

4. *Re-marriage, save after Divorce, unlawful during lifetime of first Wife or Husband.*—No Parsee shall, after the commencement of this Act, contract any marriage in the lifetime of his or her wife or husband, except after his or her lawful divorce from such wife or husband, by sentence of a Court, as hereinafter provided ; and every marriage contracted contrary to the provisions of this Section shall be void.

5. *Punishment of Bigamy.*—Every Parsee who shall, after the commencement of this Act, and during the lifetime of his or her wife or husband, contract any marriage without having been lawfully divorced from such wife or husband, shall be subject to the penalties provided in Sections 494 and 495 of the Indian Penal Code, for the offence of marrying again during the lifetime of a husband or wife.

6. *Certificate and Registry of Marriages.*—Every marriage contracted after the commencement of this Act, shall, immediately on the solemnization thereof, be certified by the officiating Priest in the form contained in the Schedule to this Act. The certificate shall be signed by the said Priest, the contracting parties,

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or their fathers or guardians when they shall not have completed the age of twenty-one years, and two witnesses present at the marriage; and the said Priest shall thereupon send such certificate, together with a fee of two Rupees, to be paid by the husband, to the Registrar of the place at which such marriage is solemnized. The Registrar, on receipt of the certificate and fee, shall enter the certificate in a register to be kept by him for that purpose, and shall be entitled to retain the fee.

7. *Appointment of Registrar.*—For the purposes of this Act a Registrar shall be appointed, who may be the Registrar appointed under Act xvi. of 1864 (to provide for the Registration of Assurances). Within the local limits of the ordinary original civil jurisdiction of a High Court, the Registrar shall be appointed by the Chief Justice of such Court, and, without such limits, by the Local Government. Every Registrar so appointed may be removed by the Chief Justice or Local Government appointing him.

8. *Marriage Register to be open for Public Inspection.*—The register of marriages mentioned in the 6th Section, shall, at all reasonable times, be open for inspection; and certified extracts therefrom shall, on application, be given by the Registrar, on payment to him by the applicant of two Rupees for each such extract. Every such register shall be evidence of the truth of the statements therein contained.

9. *Penalty for solemnizing Marriage, contrary to Section 4.*—Any Priest knowingly and wilfully solemnizing any marriage contrary to and in violation of the 4th Section, shall, on conviction thereof, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two hundred Rupees, or with both.

10. *Penalty for Priest's neglect of requirements of Section 6.*—Any Priest neglecting to comply with any of the requisitions affecting him contained in the 6th Section, shall, on conviction thereof, be punished for every such offence with simple imprisonment for a term which may extend to three months, or with fine which may extend to one hundred Rupees, or with both.

11. *Penalty for omitting to subscribe and attest the Certificate.*—Every other person required by the 6th Section to subscribe or attest the said certificate, who shall wilfully omit or neglect so to do, shall, on conviction thereof, be punished for every such offence with a fine not exceeding one hundred Rupees.

12. *Penalty for making, &c., False Certificate.*—Every person making, or signing, or attesting any such certificate, containing a statement which is false, and which he either knows or believes to be false, or does not know to be true, shall be deemed to be guilty of the offence of forgery, as defined in the Indian Penal Code, and shall be liable, on conviction thereof, to the penalties provided in Section 466 of the said Code.

13. *Penalty for failing to Register Certificate.*—Any Registrar failing to enter the said certificate, pursuant to the 6th Section, shall be punished with simple imprisonment for a term which may extend to one year, or with fine which may extend to one thousand Rupees, or with both.

14. *Penalty for secreting, destroying, or altering the Register.*—Any person secreting, destroying, or dishonestly or fraudulently altering the said register in any part thereof, shall be punished with imprisonment of either description, as defined in the Indian Penal Code, for a term which may extend to two years, or, if he be a Registrar, for a term which may extend to five years, and shall also be liable to fine, which may extend to five hundred Rupees.

### III. Of Parsee Matrimonial Courts.

21. *Appointment of Delegates.*—The Local Governments shall, in the Presidency towns and districts subject to their respective Governments, respectively appoint persons to be delegates, to aid in the adjudication of cases arising under this Act. The persons so appointed shall be Parsees: their names shall be

## PUNJAB CHIEF COURT ACT, 1866.

published in the Official Gazette; and their number shall, within the local limits of the ordinary original civil jurisdiction of a High Court, be not more than thirty, and in districts beyond such limits not more than twenty.

23. *Delegates to be deemed Public Servants.*—All delegates appointed under this Act, shall be considered to be public servants within the meaning of the Indian Penal Code.

### VI. *Of the Mode of Enforcing Penalties under this Act.*

46. *Cognizance of Offences under this Act.*—All offences under this Act may be tried by any officer exercising the powers of a magistrate, unless the period of imprisonment to which the offender is liable shall exceed that which such officer is competent to award, under the law for the time being in force in the place in which he is employed. When the period of imprisonment provided by this Act exceeds the period that may be awarded by such officer, the offender shall be committed for trial before the Court of Session.

47. *Punishment of Offences under this Act, committed within local limits of High Court.*—If any offence which by this Act is declared to be punishable with fine, or with fine and imprisonment not exceeding six months, shall be committed by any person within the local limits of the ordinary original civil jurisdiction of the High Court, such offence shall be punishable, upon summary conviction by any Magistrate of Police of the place at which such Court is held.

48. *Levy of Fines by Distress.*—All fines imposed under the authority of this Act, may, in case of non-payment thereof, be levied by distress and sale of the offender's movable property, by warrant under the hand of the officer imposing the fine.

49. *Procedure until return is made to Distress Warrant.*—In case any such fine shall not be forthwith paid, such officer may order the offender to be arrested and kept in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer, for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

50. *Imprisonment if no sufficient Distress.*—If upon the return of the warrant it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such officer, by the confession of the offender or otherwise, that he has not sufficient moveable property whereupon such fine could be levied if a warrant of distress were issued, any such officer may, by warrant under his hand, commit the offender to prison for any term not exceeding two calendar months when the amount of fine shall not exceed fifty Rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred Rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount of fine.

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### ACT No. IV. OF 1866.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 16th February 1866.)

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AN ACT to amend the constitution of the Chief Court of Judicature in the Punjab and its Dependencies.

*Preamble.*—Whereas it is expedient to amend the constitution of the Court of the Judicial Commissioner of the Punjab and its dependencies, and to invest

## PUNJAB CHIEF COURT ACT, 1866.

the Judges of the Court constituted under this Act with an original jurisdiction for the trial of certain civil and criminal cases: And whereas the Secretary of State for India in Council has given his previous sanction to the passing of this Act: It is enacted as follows:—

1. *Interpretation of Terms.*—In this Act, unless there be something repugnant in the subject or context—

*Punjab.*—“Punjab” means the territories for the time being under the Government of the Lieutenant-Governor of the Punjab and its dependencies.

*Lieutenant-Governor.*—“Lieutenant-Governor” means the Lieutenant-Governor for the time being of the Punjab.

*Chief Court.*—“Chief Court” means the Chief Court of the Punjab constituted under this Act.

*Judge, Registrar.*—“Judge,” “Registrar,” and other words denoting any particular officer respectively include any person for the time being authorized to act as such Judge, Registrar, or other officer.

*Magistrate.*—“Magistrate” denotes any person exercising any of the powers of a Magistrate, as defined in the Code of Criminal Procedure.

*Barrister.*—“Barrister” includes Barristers of England or Ireland, and members of the Faculty of Advocates in Scotland.

*Number.*—Words in the singular include the plural; words in the plural include the singular.

*Gender.*—Words importing the masculine gender include females.

*Section.*—“Section” denotes a Section of this Act.

2. *Constitution of Chief Court.*—The Court constituted under this Act shall be styled the Chief Court of the Punjab, and shall consist of two or more Judges, who shall be appointed by the Governor-General of India in Council, and of whom one at least shall always be a barrister of not less than five years' standing: Provided that the person who at the time of the constitution of the Chief Court shall be the Judicial Commissioner of the Punjab, shall become a Judge of such Court without further appointment for that purpose.

13. *The Chief Court to be the ultimate Court of Appeal from the Civil and Criminal Courts in the Punjab.*—The Chief Court shall be the highest Court of Appeal from the Civil and Criminal Courts in the Punjab, and shall (subject to the provision hereinafter contained) be the only Court exercising appellate jurisdiction in such cases (whether relating to the title or succession to land, or to the possession or any right in respect of land or otherwise) as are subject to appeal to the highest Civil and Criminal Court in the Punjab, by virtue of any law or practice now in force, or as shall become subject to appeal to the Chief Court, by virtue of any law hereafter made by the Governor-General of India in Council. Provided that when a settlement of land revenue shall be in progress, and the Local Government, under Act No. xix. of 1865 (*to define the jurisdiction of the Courts of Judicature of the Punjab and its dependencies*) shall have invested the Financial Commissioner of the Punjab with the power of a Court of final appeal in any class of suits regarding land, or the rent-revenue or produce of land, the jurisdiction of the Chief Court shall, so far as regards such class of suits, be barred during the continuance of the power with which such Commissioner shall have been so invested.

20. *Power to try European British subjects.*—The Chief Court shall have power, as a Court of original jurisdiction, to try European British subjects committed to it for trial.

*Note.*—Sections 21 to 41 are repealed by Act x. of 1875, the High Court Criminal Procedure Act.

42. *Two Judges necessary to reverse or modify Sentences or Decrees of Sessions or Civil Judges.*—No decree of any Civil Court shall be reversed or modified on appeal, and no sentence of any Criminal Court shall be reversed or modified on appeal or revision, save by the order of not less than two Judges of the Chief Court.



43. *Chief Court may provide for exercise of the Court's Jurisdiction by one or more of its Judges.*—Save as herein otherwise provided, the Chief Court may by its own rules provide for the exercise, by one or more Judges, of the original and appellate jurisdiction vested in such Court, in such manner as may appear to such Court to be convenient for the due administration of justice.

44. *Chief Court to superintend subordinate Courts, and to frame Rules of Practice for itself and such Courts.*—The Chief Court shall have superintendence over all Courts which may be subject to its appellate jurisdiction, and shall have power to call for returns, to make and issue general rules for regulating the practice and proceedings of the Chief Court and of such subordinate Courts, to give and assign to the Ministerial Officers of the said Chief Court and subordinate Courts respectively such powers and duties as may seem fit, to frame and prescribe forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the Officers, and to settle tables of fees to be allowed to pleaders, and from time to time to alter any such rule or form or table; and the rules so made, and the forms so framed, and the tables so settled, shall be published in the official Gazette, and after being so published shall be used and observed in the Chief Court: Provided that such general rules and forms and tables be not inconsistent with the provisions of this Act or any law in force, and shall before they are issued have received the sanction of the Lieutenant-Governor.

45. *Provisions as to Proceedings pending in Judicial Commissioner's Court.*—The Chief Court shall have jurisdiction in all proceedings pending in the Court of the Judicial Commissioner of the Punjab at the time of the constitution of the Chief Court; and all previous proceedings of the Court of the said Commissioner shall be dealt with as if the same had been had in the Chief Court.

46. *Procedure in case of difference of opinion between Judges when Court consists of only two.*—If the Chief Court shall consist of two Judges only, and if in any case heard by such Judges sitting together there shall be a difference of opinion between them, the following course shall be pursued, that is to say:—

1st, *On Appeal on a Question of Fact.*—If the case be heard in appeal and the difference of opinion shall be on any question of fact in the finding of the Lower Court, the finding shall be upheld.

2d, *On Appeal on a Question of Law.*—If the difference of opinion shall be on a point of law or of usage having the force of law, the ruling of the Lower Court shall in such case also be upheld, unless one of the Judges shall be of opinion that the point is one which ought to be referred to the High Court of Judicature at Calcutta, in which case the Judges shall state the point as to which they differ, and forward such statement, with their own opinions respectively, to such High Court. The Chief Court may proceed in the case notwithstanding such reference, and may pass a decree contingent upon the opinion of the High Court on the point referred; but no execution shall be issued in any case in which a reference shall have been made until the receipt of the order of the High Court.

3d, *In exercise of original Jurisdiction on a Question of Law.*—If the case be heard by the Judges in the exercise of the original jurisdiction of the Chief Court, and the difference of opinion shall be on a point of law or usage having the force of law, the Judges shall state the point on which they differ, and proceed as last hereinbefore provided. The same rule shall be observed when a difference of opinion may arise between two Judges of the Court upon a point of law reserved under the 35th Section.

4th, *In exercise of original Jurisdiction on a Question of Fact.*—If the case be heard by the Judges in the exercise of the original jurisdiction of the Chief Court, and the difference of opinion be on a question of fact, the opinion of the Senior Judge shall prevail, and he shall pronounce his decision as the decision of the Court.

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47. *Hearing and Decision of referred Cases.*—Cases referred under this Act for the opinion of the High Court of Judicature at Calcutta shall be heard by not less than three Judges of that Court, and shall be determined according to the opinion of the majority of such Judges.

53. *Short Title.*—This Act may be cited as “The Punjab Chief Court Act 1866.”

54. *Commencement of Act.*—This Act shall come into operation on such day as the Governor-General of India in Council shall fix, by a notification in the Gazette of India.

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### ACT No. XIV. OF 1866.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 23d March 1866).

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AN ACT to amend the law for the management of the Post Office, for the regulation of the Duties of Postage, and for the Punishment of Offences against the Post Office.

*Preamble.*—Whereas it is expedient to amend the law for the management of the Post Office, for the regulation of the duties of postage, and for the punishment of offences against the Post Office. It is enacted as follows :—

#### PART I.—Preliminary.

1. *Commencement of Act.*—*Short Title.*—This Act may be cited as “The Indian Post Office Act, 1866.”

5. *Exclusive privilege of carrying Letters vested in the Government of India.*—Wheresoever, within British India, posts or postal communications are or shall be established by the Government of India, the said Government shall have the exclusive privilege of conveying by post, from one place to another, all letters, except in the following cases, and shall also have the exclusive privilege of performing all the incidental services of receiving, collecting, sending, despatching, and delivering all letters, except in the following cases, that is to say :—

(1.) Letters sent by a private friend in his way, journey, or travel, so as such letters be delivered by such friend to the person to whom they shall be directed, without hire, reward, or other profit or advantage, for receiving, carrying, or delivering the same.

(2.) Letters solely concerning the affairs of the sender or receiver thereof, sent by a messenger on purpose :

(3.) Letters solely concerning goods or other property, sent either by sea or land, to be delivered with the goods or property which such letters concern, without hire, reward, or other profit or advantage, for receiving, carrying, or delivering such letters. But nothing herein contained shall authorize any person to make a collection of such excepted letters, for the purpose of sending them in the manner hereby authorized.

6. *Persons expressly forbidden to collect, carry, or deliver Letters.*—Wheresoever, within British India, posts or postal communications are or shall be established

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by the Government of India, the following persons are expressly forbidden to collect, carry, tender, or deliver any letter or letters, or to receive any letter for the purpose of carrying or delivering the same, although they shall not receive hire or reward for so doing, that is to say—

(1.) Common carriers of passengers or goods, and their drivers, servants, or agents, except letters solely concerning goods in their carriages :

(2.) Owners and commanders of ships, steam-boats, or other vessels passing on any river or canal, or to or from any port in British India, and their servants or agents, except letters solely concerning goods on board.

### PART VII.—*Offences against the Post Office.*

42. *Penalty for sending dangerous substance by Post.*—No person shall knowingly post, or send, or tender, or deliver, in order to be sent by the post, any letter, parcel or packet containing any explosive or other dangerous material or substance ; and any person contravening this prohibition shall be punished for every such offence with a fine not exceeding two hundred Rupees.

43. *Penalty for making false Certificate in order to defraud the Post Office.*—Every person who shall, for the purpose of defrauding the Post Office Revenue, wilfully certify by writing on any official or other letter or packet delivered at any Post Office for conveyance by post, that which is not true in respect of such letter or packet, or in respect of the whole of its contents, or shall knowingly send or deliver, or attempt to send or deliver, for conveyance by post, any letter or packet with any such false certificate thereon ; and every person who shall knowingly send, or permit to be sent by post, under colour or pretence of an official communication, any letter, paper, writing, or other enclosure of a private nature, shall, for every such offence, be punished with a fine not exceeding five hundred Rupees.

44. *Penalty for detaining Mails or opening Mail-bags.*—It shall not be lawful for any person, unless acting by express order of the Government, to detain, except for a criminal offence, a Post Office messenger whilst carrying the mails, or to detain any carriage or horse upon which the mails are being carried, or on any pretence to open a packet or mail-bag or box in transit from one Post Office to another, and every person who shall be guilty of any of the offences mentioned in this Section, shall be punished with a fine not exceeding five hundred Rupees.

45. *Penalty for retaining Letters, &c., delivered by mistake.*—Every person who shall fraudently retain, or wilfully secrete, or make away with, or keep or detain, or, being required to deliver up by an officer of the Post Office, shall neglect or refuse to deliver up a post letter or other article which ought to have been delivered to any other person, or a mail-bag, box or packet containing a letter or other article which shall have been sent by the post, shall be punished, on conviction before a Criminal Court, with imprisonment of either description as defined in the Indian Penal Code, for a term not exceeding two years, and shall also be liable to fine.

46. *Clause 1. Penalty for conveying Letter in Breach of Privilege.*—Every person who shall convey, otherwise than by the post, a letter not excepted from the said exclusive privilege conferred on the Government of India by Section 5 of this Act shall, for every letter so conveyed, forfeit a sum not exceeding fifty Rupees.

*Clause 2. Penalty for performing, otherwise than by the Post, any services incidental to conveying Letters.*—Every person who shall perform, otherwise than by the post, any services incidental to conveying letters from place to place, whether by receiving, taking up, ordering, collecting, carrying, tendering or delivering a letter or letters not excepted from the said exclusive privilege, shall forfeit for every such letter a sum not exceeding fifty Rupees.

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*Clause 3. Penalty for making Clubbed Packet or tendering or delivering Letter to be sent therein.*—Every person who shall make a collection of letters for the purpose of transmitting them through the post in a clubbed packet, and every person who shall knowingly tender or deliver a letter to be sent in a clubbed packet, shall forfeit for every such letter a sum not exceeding fifty Rupees.

*Clause 4. Penalty for sending Letter in breach of privilege, or delivering Letter to be so sent.*—Every person who shall send a letter not excepted from the said exclusive privilege, otherwise than by the post, or shall either tender or deliver a letter not so excepted, in order to be sent otherwise than by the post, shall forfeit for every such letter a sum not exceeding fifty Rupees.

*Clause 5. Penalty for collecting excepted Letters to send them otherwise than by Post.*—Every person who shall make a collection of excepted letters for the purpose of sending them otherwise than by the post, shall forfeit for every such letter a sum not exceeding fifty Rupees.

*Clause 6. Penalty for breach of Provisions of Section 6.*—Every person who shall carry, receive, tender or deliver a letter, or collect letters contrary to the provisions of Section 6 of this Act, shall forfeit for every such letter a sum not exceeding fifty Rupees.

*Clause 7. Penalty for practice of Acts mentioned in this Section.*—Every person who shall be in the practice of committing any of the acts mentioned in this Section, shall, for every week during which the practice shall be continued, forfeit a further sum not exceeding five hundred Rupees.

47. *Penalty for neglect on the part of persons employed to carry Mails.*—Every person employed to convey or deliver any mail-bag or box, or any letter or other article sent by post, who shall be guilty, while so employed, of drunkenness, carelessness, or other misconduct, whereby the safety of any such bag, box, or letter, or other article shall be endangered; or who shall loiter or make delay in the conveyance or delivery of any such bag, box, letter or other article; or who shall not use proper care and diligence safely to convey or deliver any such bag, letter or other article, shall be liable to a fine not exceeding fifty Rupees; and any person employed to deliver a letter or other article sent by the post, who shall not duly deliver the same, shall, within a reasonable time not exceeding twenty-four hours, report the fact at the Post Office where he received such letter or other article, and return the same; and if any such person shall wilfully make a false report, he shall be liable to a fine not exceeding fifty Rupees.

48. *Penalty for Stealing, &c., or opening Letters, &c., by persons employed in the Post Office.*—Whoever being in the employ of the Government in the Post Office Department, shall steal, fraudulently appropriate, or wilfully secrete, destroy or throw away any letter or other article sent by post, or anything contained in any such letter or other article, or shall mutilate or break open any such letter or other article, or any mail-bag or box, with the intention of fraudulently appropriating anything therein contained, shall be punished, on conviction before a Criminal Court, with imprisonment of either description as defined in the Indian Penal Code, for a term not exceeding seven years, and shall also be liable to fine.

*Notes.*—In the case of Panna Lal Mukerji, 19 W.R. Cr. 4, it was held that there must be fraudulent intention on the part of the accused to convict him under this section; and by Kemp, J. (Glover, J. doubting), that the mere opening of a newspaper and replacement of it in its envelope would not constitute an offence under this section.

49. *Penalty for fraudulently altering Marks on Letters, &c., by persons employed in the Post Office.*—Whoever being in such employ as last aforesaid shall fraudulently put any wrong mark on any letter or other article, or shall fraudulently alter, remove or cause to disappear any mark or stamp which is on any letter or other article; or shall fraudulently use or place with or upon any letter or other article, any stamp which shall have been removed from any other letter

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or other article ; or, being entrusted with the delivery of any letter or other article, shall knowingly demand or receive any sum of money for the postage thereof, other than the sum duly chargeable for such postage, shall be punished, on conviction before a Criminal Court, with imprisonment of either description as defined in the Indian Penal Code, for a term not exceeding two years, and shall also be liable to fine.

50. *Penalty for preparing incorrectly or altering or secreting Documents by persons employed in the Post Office.*—Whoever being in such employ as last aforesaid, and being entrusted with the preparing or keeping of any document, shall, with a fraudulent intention, prepare the document incorrectly, or alter that document, or secrete or destroy that document, shall be punished, on conviction before a Criminal Court, with imprisonment of either description as defined in the Indian Penal Code for a term not exceeding two years, and shall also be liable to fine.

51. *Penalty for sending Letters on which Postage has not been paid or charged by persons employed in the Post Office.*—Whoever being in such employ as last aforesaid shall send by the post, or put into any mail-bag or box any unstamped letter or other article upon which postage has not been paid or charged in the manner prescribed in this Act, intending thereby to defraud the Government of the postage on such letter or other article, shall be punished, on conviction before a Criminal Court, with imprisonment of either description as defined in the Indian Penal Code for a term not exceeding two years, and shall also be liable to fine.

52. *Penalty for abetting or concealing Offences under this Act.*—Whoever abets, within the meaning of the Indian Penal Code, or conceals any offence made punishable by this Act, shall be punished with the punishment provided for such offence.

53. *Any person charged with Offence punishable with fine only may be summarily convicted.*—Any person, whether a European British subject or not, who shall be guilty of any offence for which according to the provisions of this Act he shall be liable to a fine only, shall be punishable for such offence by any Criminal Court upon summary conviction.

54. *Conviction to be quashed on merits only.*—*Form of Conviction.*—No conviction, order or judgment of any Criminal Court, shall be quashed for error of form or procedure, but only on the merits ; and it shall not be necessary to state on the face of the conviction, order or judgment, the evidence on which it proceeds, but the depositions taken or a copy of them shall be returned with the conviction, order or judgment, and if no jurisdiction appears on the face of the conviction, order or judgment, but the depositions taken supply that defect, the conviction, order or judgment, shall be aided by what so appears in such depositions.

55. *Magistrate may refer Charge to his Assistant.*—A Magistrate may refer for trial and decision any charge of an offence hereby made punishable by fine only, to any of his Assistants or to any Deputy Magistrate lawfully appointed to exercise the powers of a Covenanted Assistant, and in such case every such Assistant or Deputy Magistrate may exercise all the powers vested in a Magistrate, subject to all the rules applicable to criminal cases deputed to such Assistants or Magistrates acting judicially.

56. *Fines—how levied.*—All fines imposed under the authority of this Act, for offences punishable by fine only, by any Criminal Court or by any Assistant to a Magistrate or Deputy Magistrate, may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand of any of the above-named officers. In case any such fine shall not be forthwith paid, any such officer may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for

the return of the warrant of distress, and such officer may take security by way of recognizance or otherwise. If upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such officer, by the confession of the party or otherwise, that he has not sufficient goods and chattels whereupon such fine or sum of money could be levied if a warrant of distress were issued, any such officer, by warrant under his hand, may commit the offender to prison, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of such officer, for any term not exceeding two calendar months where the amount of the fine shall not exceed fifty Rupees, and for any term not exceeding four calendar months where the amount shall not exceed one hundred Rupees, and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid on payment of the amount.

57. *Share of Fine to Informer.*—A share not exceeding one moiety of every fine imposed and recovered under this Act may be awarded to the informer.

58. *No proceedings for recovery of Fines to be taken without an Order.*—No proceedings shall be taken for the recovery of any fine imposed under the authority of this Act, for offences punishable by fine only, without an order of Government, or an order in writing under the hand of the Director-General of the Post Office, or of a Postmaster-General, or other officer specially invested with the powers of a Postmaster-General.

59. *Post Office Servants committing Offences in allied States.*—If any public servant who shall be employed in the Post Office Department, or shall be appointed a vendor of postage-stamps, or entrusted by the Government of India or any Local Government with the sale of postage-stamps within the dominions of any foreign prince or state in India in alliance with her Majesty, in which a post shall be established by the Government of India, shall, within the dominions of such prince or state, commit any act hereby prohibited, or omit to do any act hereby required to be done by any person similarly employed, appointed or entrusted as aforesaid within British India, such public servant shall be guilty of an offence, and, on conviction thereof, shall be punished in the same manner as if such act had been done or omitted within British India; and every such person may be tried, convicted and punished either by fine or otherwise, according to the nature of the offence, by any Court or officer duly empowered by the Governor-General of India in council, to take cognizance of offences committed in such dominions by public servants, or by any Court or Magistrate, or other competent officer in any part of British India, in the same manner as if the offence had been committed in such part.

60. *Letters, &c., suspected to contain contraband articles, or writings in contravention of this Act, how to be dealt with.*—If any officer in charge of a Post Office shall suspect that any letter or other article lying for delivery at his office contains any contraband article, or any article on which duty is owing to Government; or that any letter or other article lying for delivery at the Post Office contains any writing or enclosure in contravention of the provisions of Sections 14, 16, or 43 of this Act, it shall be lawful for such officer to summon the person to whom the letter or other article is directed, to attend at the Post Office, by himself or agent, within forty-eight hours after the arrival thereof at that Post Office, and to open the same in the presence of the person to whom it is directed, or of that person's agent, and if that person shall not so attend by himself or agent, then to open it in the absence of that person. Provided that if the officer in charge be under the rank of a Postmaster, he shall call in two respectable persons as witnesses before he shall open a letter or other article in the absence of the person to whom it is addressed. Provided also, that in all cases the opened letter or other article shall be subsequently delivered to the persons to whom it is addressed, unless it be required for ulterior proceedings, and that the opening of the same, and the circumstances connected therewith,

## HIGH COURT (NORTH-WEST PROVINCES).

shall be immediately reported to the Postmaster-General. It shall also be lawful for any officer in charge of a Post Office to refuse to forward any parcel through the Post Office by sea to any foreign port, or to any place not on the continent of India, unless such parcel be accompanied by a Custom-House Pass.

61. *Property sent by the Post to be laid in the Postmaster-General.*—Whenever an offence shall be committed in respect of any mail-bag or box, or any letter or other article sent by the Post, it shall be lawful to lay, in the charge to be preferred against the offender, the property of such mail-bag, box, letter or other article in the Postmaster-General of the Presidency; and it shall not be necessary in the charge to allege, or to prove upon the trial or otherwise, that such mail-bag, box, letter or other article was of any value; and in any charge to be preferred against any person employed under the Post Office for any offence committed against this Act, it shall be lawful to state that such offender was employed under the Post Office at the time of committing the offence, without stating further the nature or particulars of his employment.

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### ACT No. XXIV. OF 1866.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 11th July 1866.)

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AN ACT to amend the procedure of the High Court of Judicature for the North-Western Provinces of the Presidency of Fort William.

*Preamble.*—Whereas it is expedient to amend the procedure of the High Court of Judicature for the North-Western Provinces of the Presidency of Fort William in the exercise of its Original Criminal, and its Civil, Intestate and Testamentary Jurisdictions. It is hereby enacted as follows :—

1. *Interpretation Clause.*—In this Act, unless there be something repugnant in the subject or the context—

*High Court.*—“High Court” denotes Her Majesty’s High Court of Judicature for the North-Western Provinces of the Presidency of Fort William :

*Lieutenant-Governor.*—“Lieutenant-Governor” denotes the Lieutenant-Governor for the time being of the said Provinces :

*Magistrate.*—“Magistrate” denotes any person exercising any of the powers of a Magistrate under the Code of Criminal Procedure :

*Registrar.*—“Registrar” includes, besides such officer, any officer specially appointed by the Lieutenant-Governor to discharge the functions given by this Act to the Registrar :

*Number.—Gender.*—Words in the singular include the plural, and words denoting the masculine gender include females.

*Note.*—Sections 2 to 17 are repealed by Act x. of 1875—the High Court Criminal Procedure Act. By Section 23 of this Act its short title is—The High Court (N.W.P.) Act, 1866.

## GAMING AND GAMING-HOUSES.

ACT No. III. OF 1867.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 25th January 1867.)

*Act to provide for the Punishment of Public Gambling and the Keeping of Common Gaming-houses in the North-Western Provinces of the Presidency of Fort William, and in the Punjab, Oudh, and Central Provinces, and British Burmah.*

*Enactment.*—Whereas it is expedient to make provision for the punishment of public gambling and the keeping of common gaming-houses in the territories respectively subject to the Governments of the Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William, of the Lieutenant-Governor of the Punjab, and to the administrations of the Chief Commissioner of Oudh, of the Chief Commissioner of the Central Provinces, and of the Chief Commissioner of British Burmah; It is hereby enacted as follows:—

*Interpretation Clause.*—*Lieutenant-Governor.*—In this Act “Lieutenant-Governor” means the Lieutenant-Governor of the said North-Western Provinces or the Punjab, as the case may be:

*Chief Commissioner.*—“Chief Commissioner” means the Chief Commissioner of Oudh, the Central Provinces, or British Burmah, as the case may be:

*Common Gaming-house.*—“Common gaming-house” means any house, walled enclosure, room, or place in which cards, dice, tables, or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, or keeping such house, enclosure, room, or place, whether by way of gaming for the use of the instruments of gaming, or of the house, enclosure, room, or place, or otherwise howsoever:

*Gender.*—Words in the singular include the plural and *vice versa*.

*Gender.*—Words denoting the masculine gender include females.

*Power to extend Act.*—Sections 13, 17, and 18 of this Act shall extend to all parts of the said territories; and it shall be competent to the Lieutenant-Governor or the Chief Commissioner, as the case may be, whenever he may think fit, to extend, by a notification to be published in three successive issues of the official *Gazette*, all or any of the remaining Sections of this Act to any city, town, suburb, railway station-house and place being not more than five miles distant from any part of such station-house within the territories subject to his government or administration, and in such notification to define, for the purposes of this Act, the limits of such city, town, suburb, or station-house, and from time to time to alter the limits so defined. From the date of such extension, so much of any rule having the force of law which shall be in force in the territories to which such extension shall have been made, as shall be inconsistent with or repugnant to any Section so extended, shall be inoperative in such territories.

*Penalty for owning, or keeping, or having charge of, a Gaming-house.*—Whoever owns, or occupies, or has the use of, any house, walled enclosure, room, or place, situate within the limits to which this Act applies, and who keeps, or uses the same as a common gaming-house: and whoever, being owner or occupier of any such house, walled enclosure, room, or place as



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aforesaid, knowingly or wilfully permits the same to be opened, occupied, used, or kept by any other person as a common gaming-house; and whoever has the care or management of, or in any manner assists in conducting, the business of any house, walled enclosure, room, or place as aforesaid, opened, occupied, used, or kept for the purpose aforesaid; and whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, walled enclosure, room, or place, shall be liable to a fine not exceeding two hundred Rupees, or to imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding three months.

4. *Penalty for being found in a Gaming-house.*—Whoever is found in any such house, walled enclosure, room, or place, playing or gaming with cards, dice, counters, money, or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake, or otherwise, shall be liable to a fine not exceeding one hundred Rupees, or to imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding one month; and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

5. *Power to enter and authorize Police to enter and search.*—If the Magistrate of a District or other officer invested with the full powers of a Magistrate, or the District Superintendent of Police, upon credible information, and after such inquiry as he may think necessary, has reason to believe that any house, walled enclosure, room, or place, is used as a common gaming-house, he may either himself enter, or by his warrant authorize any officer of Police, not below such rank as the Lieutenant-Governor or Chief Commissioner shall appoint in this behalf, to enter, with such assistance as may be found necessary, by night or by day, and by force if necessary, any such house, walled enclosure, room, or place, and may either himself take into custody, or authorize such officer to take into custody, all persons whom he or such officer finds therein, whether or not then actually gaming; and may seize or authorize such officer to seize all instruments of gaming, and all monies and securities for money, and articles of value reasonably suspected to have been used or intended to be used for the purpose of gaming, which are found therein; and may search or authorize such officer to search all parts of the house, walled enclosure, room, or place, which he or such officer shall have so entered, when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody; and may seize or authorize such officer to seize and take possession of all instruments of gaming found upon such search.

6. *Finding Cards, &c., in suspected Houses, to be evidence that such houses are common Gaming-houses.*—When any cards, dice, gaming-tables, cloths, boards, or other instruments of gaming are found in any house, walled enclosure, room, or place, entered or searched under the provisions of the last preceding Section, or about the person of any of those who are found therein, it shall be evidence, until the contrary is made to appear, that such house, walled enclosure, room, or place, is used as a common gaming-house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or police officer, or any of his assistants.

7. *Penalty on Persons arrested for giving false Names and Addresses.*—If any person found in any common gaming-house entered by any Magistrate or officer of police under the provisions of this Act, upon being arrested by any such officer or upon being brought before any Magistrate, on being required by such officer or Magistrate to give his name and address, shall refuse or neglect to give the same, or shall give any false name or address, he may upon conviction before the same or any other Magistrate be adjudged to pay any penalty not exceeding five hundred Rupees, together with such costs as to such Magistrate shall appear reasonable, and on the non-payment of such penalty and costs, or

## GAMING AND GAMING-HOUSES.

the first instance, if to such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

8. *On Conviction of keeping a Gaming-house, Instruments for Gaming to be destroyed.*—On the conviction of any person for keeping or using any such common gaming-house, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and converted into money, and the proceeds thereof, with all monies seized therein, to be forfeited; or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

9. *Proof of playing for Stakes unnecessary.*—It shall not be necessary, in order to convict any person of keeping a common gaming-house or of being concerned in the management of any common gaming-house, to prove that any person had playing at any game was playing for any money, wager, or stake.

10. *Magistrate may require any Person apprehended to be sworn and give evidence.*—It shall be lawful for the Magistrate before whom any persons shall be brought, who have been found in any house, walled enclosure, room, or place covered under the provisions of this Act, to require any such persons to be examined on oath or solemn affirmation, and give evidence touching any unlawful gaming in such house, walled enclosure, room, or place, or touching any act done for the purpose of preventing, obstructing, or delaying the entry into such house, walled enclosure, room, or place, or any part thereof, of any Magistrate or officer authorized as aforesaid. No person so required to be examined as a witness shall be excused from being so examined when brought before such Magistrate as aforesaid, or from being so examined at any subsequent time by the same or any other Magistrate, or by or before any Court on any pleading or trial in any ways relating to such unlawful gaming or any such act as aforesaid, or from answering any question put to him touching the facts aforesaid, on the ground that his evidence will tend to criminate him.

Any such person so required to be examined as a witness, who refuses to take oath or make affirmation accordingly or to answer any such question as aforesaid, shall be subject to be dealt with in all respects as any person committing the offence described in Section 178 or Section 179 (as the case may be) under the Indian Penal Code.

*Witnesses indemnified.*—Any person who shall have been concerned in any act contrary to this Act, and who shall be examined as a witness before a Magistrate on the trial of any person for a breach of any of the provisions of this Act relating to gaming, and who, upon such examination, shall, in the opinion of the Magistrate, make true and faithful discovery, to the best of his knowledge, of all things as to which he shall be so examined, shall thereupon receive from the said Magistrate a certificate in writing to that effect, and shall be exempted from all prosecutions under this Act for anything done before that time in respect of such gaming.

11. *Act not to apply to certain Games.*—Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever

*Gaming and setting Birds and Animals to fight in public Streets. Destruction of Instruments of Gaming found in public Streets.*—A Police officer may arrest without warrant any person found playing for money or other valuable consideration with cards, dice, counters, or other instruments of gaming, used in any game not being a game of mere skill, in any public street, place, thoroughfare situated within the limits aforesaid, or any person setting any birds or animals to fight in any public street, place, or thoroughfare situated within the limits aforesaid, or any person there present aiding and abetting the public fighting of birds and animals. Such person when apprehended shall be brought without delay before a Magistrate, and shall be liable to a fine

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not exceeding fifty Rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month; and such Police officer may seize all instruments of gaming found in such public place or on the person of those whom he shall arrest, and the Magistrate may on conviction of the offender order such instruments to be forthwith destroyed.

14. *Offences by whom triable.*—Offences punishable under this Act shall be triable by any Magistrate having jurisdiction in the place where the offence is committed. But such Magistrate shall be restrained within the limits of his jurisdiction under the Code of Criminal Procedure, as to the amount of fine or imprisonment he may inflict.

15. *Penalty for subsequent Offence.*—Whoever, having been convicted of an offence punishable under Section 3 or Section 4 of this Act, shall again be guilty of any offence punishable under either of such sections, shall be subject for every such subsequent offence to double the amount of punishment to which he would have been liable for the first commission of an offence of the same description. Provided that he shall not be liable in any case to a fine exceeding six hundred Rupees, or to imprisonment for a term exceeding one year.

16. *Portion of Fine may be paid to Informer.*—The Magistrate trying the case may direct any portion of any fine which shall be levied under Sections 3 and 4 of this Act, or any part of the monies or proceeds of articles seized and ordered to be forfeited under this Act, to be paid to an informer.

17. *Recovery and Application of Fines.*—All fines imposed under this Act may be recovered in the manner prescribed by Section 61 of the Code of Criminal Procedure, and such fines shall (subject to the provisions contained in the last preceding Section) be applied as the Lieutenant-Governor or Chief Commissioner, as the case may be, shall from time to time direct.

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### ACT No. I. OF 1868.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 3d January 1868.)

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AN ACT for shortening the language used in Acts of the Governor-General of India in Council, and for other purposes.

*Preamble.*—Whereas it is expedient to shorten the language used in Acts made by the Governor-General of India in Council, and to make certain provisions relating to such Acts: It is hereby enacted as follows:—

1. *Short Title.*—This Act may be cited as “The General Clauses’ Act, 1868.”

2. *Interpretation Clause.*—In this Act, and in all Acts made by the Governor-General of India in Council, after this Act shall have come into operation,—unless there be something repugnant in the subject or context,—

(1) *Gender.*—Words importing the masculine gender shall be taken to include females;

(2) *Number.*—Words in the singular shall include the plural, and *vice versa*;

(3) *Person.*—“Person” shall include any company, or association, or body of individuals, whether incorporated or not;

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(4.) *Year and Month*.—"Year" and "month" shall respectively mean a year and month reckoned according to the British calendar;

(5.) *Immovable Property*.—"Immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

(6.) *Movable Property*.—"Movable property" shall mean property of every description, except immovable property;

(7.) *Her Majesty*.—"Her Majesty" shall include her heirs and successors to the Crown;

(8.) *British India*.—"British India" shall mean the territories for the time being vested in Her Majesty by the Statute 21 & 22 Vict., cap. 106 (*An Act for the better government of India*), other than the Settlement of Prince of Wales' Island, Singapore, and Malacca;

(9.) *Government of India*.—"Government of India" shall denote the Governor-General of India in Council, or, during the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone, as regards the powers which may be lawfully exercised by them or him respectively;

(10.) *Local Government*.—"Local Government" shall mean the person authorized by law to administer executive government in the part of British India in which the Act containing such expression shall operate, and shall include a Chief Commissioner;

(11.) *High Court*.—"High Court" shall mean the highest Civil Court of Appeal in such part;

(12.) *District Judge*.—"District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction; but shall not include a High Court, in the exercise of its ordinary or extraordinary original civil jurisdiction.

(13.) *Magistrate*.—"Magistrate" shall include all persons exercising all or any of the powers of a Magistrate, under the Code of Criminal Procedure;

(14.) *Barrister*.—"Barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland;

(15.) *Section*.—"Section" shall denote a section of the Act in which the word occurs;

(16.) *Will*.—"Will" shall include a codicil, and every writing making a voluntary posthumous distribution of property;

(17.) *Oath, Swear, and Affidavit*.—"Oath," "swear," and "affidavit" shall include affirmation, declaration, affirming and declaring in the case of persons by law allowed to affirm or declare, instead of swearing;

(18.) *Imprisonment* shall mean imprisonment of either description, as defined in the Indian Penal Code;

(19.) *Son, Father*.—And in the case of any one whose personal law permits adoption, "son" shall include an adopted son, and "father" an adoptive father.

3. In all Acts made by the Governor-General of India in Council, after this Act shall have come into operation:—

(1.) *Revival of Repealed Enactments*.—For the purpose of reviving, either wholly or partially, a Statute, Act, or Regulation repealed, it shall be necessary expressly to state such purpose;

(2.) *Commencement of Time*.—For the purpose of excluding the first in a series of days or any other period of time, it shall be sufficient to use the word "from;"

(3.) *Termination of Time*.—For the purpose of including the last in a series of days or any other period of time, it shall be sufficient to use the word "to;"

(4.) *Official Chiefs and Subordinates*.—For the purpose of expressing that a law relative to the chief or superior of an office, shall apply to the deputies or subordinates lawfully executing the duties of such office in the place of their superior, it shall be sufficient to prescribe the duty of the superior;

(5.) *Successors*.—For the purpose of indicating the relation of a law to the

## CONTAGIOUS DISEASES ACT.

successors of any functionaries, or of corporations having perpetual succession, it shall be sufficient to express its relation to the functionaries or corporations; and

(6.) *Substitution of Functionaries.*—For the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, it shall be sufficient to mention the official title of the officer at present executing such functions, or that of the officer by whom the functions are commonly executed.

4. *Duty may be taken, pro rata.*—Whenever by any Act or Regulation now in force, or hereafter to be in force, any duty of customs or excise, which in the nature thereof is leviable on any given quantity, by weight, measure, or value, of any goods or merchandise, a like duty shall be leviable according to the same rate, on any greater or less quantity.

5. *Recovery of Fines.*—The provisions of Sections 63 to 70, both inclusive, of the Indian Penal Code, and of Section 61 of the Code of Criminal Procedure, shall apply to all fines imposed under the authority of any Act hereafter to be passed, unless such Act shall contain an express provision to the contrary.

6. *Matters done under an Enactment before its repeal to be unaffected.*—The repeal of any Statute, Act, or Regulation, shall not affect anything done, or any offence committed, or any fine or penalty incurred, or any proceedings commenced before the repealing Act shall have come into operation.

Sections 7 and 8 have been repealed by the Indian Evidence Act, i. of 1872.

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### ACT No. XIV. OF 1868.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor-General on the 17th April 1868.)

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#### *An Act for the Prevention of certain Contagious Diseases.*

*Preamble.*—Whereas it is expedient to provide for the better prevention of certain contagious diseases; It is hereby enacted as follows:—

#### *Preliminary.*

1. *Short Title.*—This Act may be cited as “The Indian Contagious Diseases’ Act, 1868.”

2. *Interpretation Clause.*—In this Act—

*Magistrate.*—“Magistrate” means any person exercising the powers of a Magistrate or of a Subordinate Magistrate of the first class and includes a Magistrate of Police in a Presidency Town:

*Contagious Disease.*—“Contagious disease” means any contagious venereal disease:

*Brothel-keeper.*—“Brothel-keeper” means the occupier of any house, room or place to or in which women resort or are for the purpose of prostitution, and every person managing or assisting in the management of any such house, room or place.

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3. *Extent of Act.*—The places to which this Act applies shall be such places as the Local Government shall from time to time, with the previous sanction of the Governor-General of India in Council specify by notification in the official *Gazette*. The limits of such places shall, for the purposes of this Act, be such as are defined in the said notification, and may, from time to time, with such sanction as aforesaid, be altered by a like notification.

### *Unregistered Prostitutes and Brothel-keepers.*

4. *Punishment.*—In any place to which this Act applies, no woman shall carry on the business of a common prostitute, and no person shall carry on the business of a brothel-keeper, without being registered under this Act at such place, and without having in her or his possession such evidence of registration as hereinafter provided. Any woman carrying on the business of a common prostitute, and any person carrying on the business of a brothel-keeper, without having been registered as aforesaid, or without having in her or his possession such evidence as aforesaid, shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one month, or with fine not exceeding one hundred Rupees, or with both.

### *Registration of Prostitutes and Brothel-keepers.*

5. *Local Government to make Rules for Registration, and appoint Officers.*—The Local Government shall make rules for the registration of common prostitutes and of brothel-keepers, and shall appoint officers for the conduct of such registration, and may, with the previous sanction of the Governor-General of India in Council, assign salaries and establishments to the said officers. The Local Government shall also provide such books and forms as may be necessary for the purposes of this Act. Every woman complying with such rules (so far as they relate to prostitutes) and every brothel-keeper complying with such rules (so far as they relate to brothel-keepers) shall be deemed to be registered under this Act, and the registering officer shall furnish her or him with such evidence of registration as the Local Government shall from time to time direct. The name, age, caste (if any) and residence of every such woman, and such other particulars respecting her as the Local Government shall from time to time direct, shall be entered in a book to be kept for that purpose. The name and residence of every such brothel-keeper, and the situation of the house, room or place in which he carries on his business, shall be entered in a book to be kept for that purpose.

6. *Change of Residence.*—Whenever any such woman changes her residence, she shall give notice thereof to such person and in such manner as the Local Government shall from time to time direct, and the necessary alterations shall be made in the said book and in the evidence of registration furnished to her as aforesaid. Any such woman failing to give notice as aforesaid shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to fourteen days, or with fine not exceeding fifty Rupees, or with both. Whenever any brothel-keeper changes his residence, or acquires or enters into the occupation of any such house, room or place as last aforesaid, other than the house, room or place of which the situation has been registered as aforesaid, he shall give notice thereof to such person and in such manner as the Local Government shall from time to time direct, and the necessary alterations or additions shall be made in or to the said book and in the evidence of registration furnished to him as aforesaid. Any such brothel-keeper failing to give notice as last aforesaid shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one month, or with fine not exceeding one hundred Rupees, or with both.

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### *Refusal to show Evidence of Registration.*

7. *Penalty.*—Any registered woman or brothel-keeper who, without reasonable excuse, neglects or refuses to produce and show the evidence of her or his registration with which she or he shall have been furnished as aforesaid, when required so to do by such officer as the Local Government shall from time to time appoint in this behalf, shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to fourteen days, or with fine not exceeding fifty Rupees, or with both. Information of the class of officers for the time being authorized to make requisitions under this Section shall be furnished to registered women and brothel-keepers under such rules as the Local Government shall from time to time prescribe.

### *Special Provisions relating to Brothels.*

8. *Permitting unregistered Prostitutes to resort to Brothels.*—If any brothel-keeper whether registered as such under this Act or not, has reasonable cause to believe any woman to be a prostitute and not to be registered under this Act, and induces or suffers her to resort or be, for the purpose of prostitution, to or in the house, room or place in which he carries on his said business, he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine, which may extend to one thousand Rupees, or with both. Provided that nothing in this or any other Section of this Act shall exempt the offender from any penal or other consequences to which he may be liable for keeping or being concerned in keeping a brothel or disorderly house or for the nuisance thereby occasioned.

9. *Brothel-keepers bound to furnish Information to Officers.*—Every brothel-keeper shall be legally bound to furnish information on any subject relating to his business to any such officers and in such manner and at such times as the Local Government shall from time to time prescribe in this behalf. Every such officer shall, for the purposes of this Section, be deemed to be a public servant.

### *Examination of Prostitutes.*

10. *Appointment of Examiners.*—The Local Government shall have power to appoint persons to make periodical examinations of registered women in order to ascertain whether at the time of each such examination they are affected with contagious disease.

*Note.*—The mere possession of a registration ticket under this Act does not necessarily make the holder of it a registered public prostitute. The registration must be voluntary; and the mere fact that a woman appears in answer to a summons issued by the police, and replies to questions put to her, is not sufficient to bring her within the Act.—Reg. v. Sukhimonee Raur, 12 W.R. Cr. 55.

11. *Local Government may make Rules as to Examinations. Reports.*—For each of the places to which this Act applies, the Local Government may make rules consistent with this Act respecting the times and places of examination under this Act at that place, and generally respecting the arrangements for the conduct of those examinations and for recording the results thereof; and a copy of rules purporting to be rules under this Section shall, if signed by a Secretary to such Government, be evidence of such rules for the purposes of this Act. The Local Government may also require the persons making such examination to send in reports to such persons at such times and in such form as the Local Government shall from time to time prescribe. Any person not a medical officer appointed to make such examination, and any registered woman, disobeying any rule made under this Section, shall, on conviction before a Magistrate, be punished with simple imprisonment for a term which may extend to one month, or with fine not exceeding one hundred Rupees, or with both.

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### *Certified Hospitals.*

12. *Local Government may provide and certify Hospitals.*—The Local Government may from time to time provide any buildings or parts of buildings as hospitals for the purposes of this Act. Any building or part of a building so provided and certified in writing by a Secretary to the Local Government to be so provided, shall be deemed a certified hospital under this Act. Every certified hospital so provided shall be placed under the control and management of such persons as to the Local Government shall from time to time seem fit.

13. *Regulations for Management of Hospitals.*—The Local Government shall make regulations for the inspection, management, and government of the hospitals as far as regards women authorized by this Act to be detained therein for medical treatment or being therein under medical treatment for a contagious disease. A copy of regulations purporting to be regulations made under this Section shall, if signed by a Secretary to such Government, be evidence of such regulations for the purposes of this Act.

14. *Registered Prostitutes on receiving notice to go to Hospital. Neglect.*—Any woman registered under this Act, shall, on receiving notice from any such officer as the Local Government shall from time to time appoint in this behalf, proceed to the certified hospital named in such notice, and place herself there for medical treatment. If after the notice is delivered to her, she neglects or refuses to proceed to the said hospital within the time specified in the said notice, an officer of Police shall apprehend her and convey her with all practicable speed to the hospital, and place her there for medical treatment.

15. *Detention of Prostitutes under Medical Treatment.*—Whenever any such woman affected with contagious disease places herself or is placed as aforesaid in a certified hospital for medical treatment, she shall be detained there for that purpose by such medical officer of the hospital as the Local Government shall from time to time appoint in this behalf until discharged by him by writing under his hand. Medical treatment, lodging, clothing and food shall be provided gratis for every such woman during her detention in the hospital.

16. *Leaving Hospital before Discharge.*—If any woman, authorized by such medical officer to be detained in a certified hospital for medical treatment, quits the hospital without being discharged therefrom by the chief medical officer thereof, by writing under his hand (the proof whereof shall lie on the accused) or if any woman authorized by this Act to be detained in a certified hospital for medical treatment, or any woman being in a certified hospital under medical treatment for a contagious disease, refuses or wilfully neglects while in the hospital to conform to the regulations thereof approved under this Act, then and in every such case such woman shall, on conviction before a Magistrate, be punished with imprisonment, in the case of a first offence, for any term not exceeding one month, and in the case of a second or any subsequent offence, for any term not exceeding three months, and in case she quits the hospital without being discharged as aforesaid, she may be taken into custody without warrant by any officer of police. On the expiration of her term of imprisonment under this Section, such woman shall be sent back from the prison to the certified hospital, and shall be detained there unless the medical officer of the prison at the time of her discharge from imprisonment certifies in writing that she is free from contagious disease (the proof of which certificate shall lie on her).

### *Out-door Treatment of Prostitutes.*

17. *Power to make Rules for Out-door Treatment of Registered Women.*—It shall be lawful for the Local Government to empower such surgeons or other persons as it shall from time to time appoint to prescribe, by order to be served on any woman registered under this Act, who has not received a notice under



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Section 14, the times and places at which she shall attend for medical treatment, and, if necessary, the medical treatment to which she shall submit. Every such woman disobeying or failing to comply with any such order, shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to a month, or with fine not exceeding one hundred Rupees, or with both.

18. *Penalty for acting as a Prostitute while under Medical Treatment.*—If any registered woman on whom such order as last aforesaid shall have been served, conducts herself as a common prostitute before such surgeon or other person empowered as last aforesaid, certifies in writing to the effect that she is then free from a contagious disease (the proof of which shall lie on her), she shall, on conviction before a Magistrate be punished with imprisonment for a term which may extend to six months, or with fine not exceeding five hundred Rupees, or with both.

19. *Subsistence Allowance.*—During the interval between the service of such order upon any registered woman and the granting of such certificate, an allowance for her subsistence shall be provided of such amount and in such manner as the Local Government shall from time to time prescribe.

### *Segregation of Prostitutes.*

20. *Penalty for residing in Street or Place after Prohibition.*—In any place to which the Local Government shall, by notification in the official *Gazette*, have specially extended this Section, it shall be lawful for such officer, as the Local Government shall from time to time appoint in this behalf, to cause a notice to be served on any registered woman, requiring her, after an interval of not less than seven days to be mentioned in the notice, not to reside in any street or place therein specified. Any registered woman on whom such notice shall have been served disobeying the requisition therein contained shall, on conviction before a Magistrate, be punished with imprisonment, in the case of a first offence for a term not exceeding one month, and in the case of a second or any subsequent offence, for any term not exceeding three months.

### *Removal from Registry.*

21. *Removal of Name from Registry.*—The Local Government shall lay down rules prescribing a procedure in accordance with which any woman registered under this Act, and desirous of ceasing to carry on the business of a common prostitute in the place in which she is registered, and of having her name removed from the said book, may have her name removed accordingly.

### *Miscellaneous.*

22. *Institution of Prosecutions.*—No prosecution shall be instituted under this Act, except at the instance of such officer as the Local Government shall from time to time appoint in this behalf.

23. *Judicial Notice to be taken of Signatures of certain Officers.*—In any proceeding under this Act, any notice, order, certificate, copy of regulations, or other document purporting to be signed by any person in the service of Government, or by any person whom the Local Government shall have, in the exercise of the powers conferred on it by this Act, appointed to sign such document, shall on production be received in evidence, and shall be presumed to have been duly signed by the person and in the character by whom and in which it purports to be signed, until the contrary is shown.

24. *Service of Notice.*—Every notice and order required by this Act to be served on a woman shall be served by delivery thereof either to her personally or to some person for her at her usual place of abode.

25. Notice in writing of every suit against any person for anything done in pursuance of this Act, and of the cause thereof shall be given to the intended

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defendant one month at least before the commencement of the suit. The plaintiff shall not recover if tender of sufficient amends is made before suit, or if a sufficient sum of money is paid into Court before suit brought by or on behalf of the defendant.

*Note.*—This section, as it originally stood, provided that all such suits as therein mentioned must be commenced within three months after the thing done, complained of. This part of the section has been repealed by Act ix. of 1871, the Limitation Act, and 90 days under the Limitation Act is the time within which such suits must be brought.—Part ii., schedule ii., Act ix. of 1871.

26. *Power to make Rules.*—The Local Government shall have power from time to time to declare by what officer anything directed to be done by this Act shall be done, and by what class of officers information regarding anything made an offence by this Act shall be exclusively furnished. The Local Government may also from time to time make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement. The Local Government may also from time to time alter and add to any rules or regulations made under this Act: Provided that such alterations and additions are not inconsistent with any of the provisions hereinbefore contained.

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### ACT No. II. OF 1869.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 12th February 1869.)

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#### AN ACT for the appointment of Justices of the Peace.

*Preamble.*—Whereas it is expedient to consolidate and amend the law relating to the appointment of Justices of the Peace; It is hereby enacted as follows:—

1. *Short title.*—This Act may be called “The Justices of the Peace Act, 1869.”

2. *Repeal of enactments.*—The enactments mentioned in the schedule hereto annexed are hereby repealed to the extent specified in the third column of the same schedule.

3. *Appointment of Justices of the Peace for the Mofussil.*—The Governor-General of India in Council, so far as regards the whole or any part of British India (other than the towns of Calcutta, Madras, and Bombay), and every Local Government, so far as regards the territories subject to its Government or administration (other than the towns aforesaid), may, by notification in the official Gazette, appoint such and so many of the Covenanted Civil Servants of the Crown in India, or other British inhabitants, as the said Governor-General in Council or the Local Government (as the case may be) shall think properly qualified to act as Justices of the Peace within and for the territories mentioned in such notification.

4. *Appointment of Justices of the Peace for the presidency towns.*—The Governor-General of India in Council or the Local Government, so far as regards the town of Calcutta, and Local Government so far as regards the towns of Madras and Bombay, may, by notification in the official Gazette, appoint any persons resident within British India and not being the subjects of any foreign State whom such Governor-General in Council or Local Government (as the case may be) shall think properly qualified to act as Justices of the Peace within the limits of the town mentioned in such notification.

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5. *Powers and duties of Justices of the Peace.*—All persons appointed under Section 3 or Section 4 shall be Justices of the Peace and shall have authority to act as such, and shall have power to commit for trial European British subjects of Her Majesty to the Court prescribed in that behalf by the law in force for the time being, and shall do all other acts appertaining to the office of Justice of the Peace which under or by virtue of any law in force for the time being may be done by a Justice of the Peace within the said territories or towns, as the case may be.

6. *Powers of Justices of the Peace in Native States.*—All persons being servants of Government appointed by the Governor-General in Council to act as Justices of the Peace for the whole of British India, and all persons being servants of Government appointed by a Local Government to act as Justices of the Peace for the territories subject to such Government other than the towns aforesaid, shall, so far as regards European British and Christian subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty, have power to act as Justices of the Peace and to commit such subjects for trial according to law.

*Note.*—Sections 7 and 8, which provided for declarations to be taken by Justices of the Peace, are repealed by the Indian Oaths Act x. of 1872, by Section 16 of which official oaths are abolished.

9. *Power to suspend or dismiss.*—The Governor-General of India in Council in the case of any Justice of the Peace appointed by him, and the Local Government in the case of any Justice of the Peace appointed by it, may suspend or dismiss any person so appointed.

10. *Present Justices of the Peace to be deemed to be appointed under this Act.*—Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns under any commission issued by any of the said High Courts, shall be deemed to have been appointed under Section 3 by the said Governor-General in Council to act as a Justice of the Peace for the whole of British India. Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under Section 4 by the Local Government.

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### ACT No. 'XV. OF 1869.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 4th June 1869.)

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AN ACT to provide facilities for obtaining the evidence and appearance of prisoners and for service of process upon them.

*Preamble.*—Whereas it is expedient to provide facilities for obtaining the evidence and appearance in Court of prisoners and for service of process upon them; It is hereby enacted as follows :—

#### PART I.—Preliminary.

1. *Short title.*—This Act may be called “The Prisoners’ Testimony Act, 1869.”

2. *Presidency Small Cause Courts. Police Magistrates.*—For the purposes of this Act, the Courts of Small Causes established within the local limits of the

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ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras, and Bombay, and the Courts of persons exercising the powers of a Magistrate of Police within the same limits, shall be deemed to be respectively subordinate to the said High Courts.

### PART II.—*Bringing up Prisoners.*

3. *Criminal Courts may make orders under Act.*—Any Criminal Court not inferior to the Court of a Subordinate Magistrate of the first class may in its discretion, if it appear that the testimony of any person confined in any jail situate within the local limits of its appellate jurisdiction, if the Criminal Court be a High Court, or, if it be not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter depending in such Criminal Court, or if a charge of an offence against such person is made or pending, make an order in the form in Schedule A or Schedule B (as the case may be) to this Act annexed, directed to the officer in charge of the said jail.

4. *Civil Courts may make orders under Act.*—Any Civil Court may in its discretion, if it appear that the testimony of any person confined in any jail situate within the local limits of its appellate jurisdiction, if the Civil Court be a High Court, or, if it be not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter depending in such Civil Court, make an order in the form in the said Schedule A, directed to the officer in charge of said jail.

5. *Court to countersign orders.*—When such order is made in any civil matter pending in a Court subordinate to the Court of the District Judge, or in any Court of Small Causes situate outside the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William in Bengal, Madras, and Bombay, it shall not be forwarded to the officer to whom it is directed, or acted upon by him, until the same shall have been submitted to, and countersigned by, such Judge, or the District Judge within the local limits of whose jurisdiction such Court of Small Causes is situate. *Statement of facts necessitating order.*—Every order so submitted shall be accompanied by a statement under the hand of the Judge of the facts which in his opinion render such order necessary, and the District Judge may, after considering such statement, decline to countersign the order.

6. *Order to be transmitted through Magistrate of the District in which the person is confined.*—When any person for whose attendance an order as hereinbefore mentioned shall be made is confined in any District other than that in which the Court making or countersigning the order is situate, the order shall be sent by the Court by which it shall have been made or countersigned to the Magistrate of the District or division of a District in which the said person is confined, and such Magistrate shall cause it to be delivered to the officer in charge of the jail in which such person is confined.

7. *Order by High Court for removal of person confined more than 100 miles from place where his evidence is required.*—In any case in which a person is confined in a jail within the local limits of the ordinary original civil jurisdiction of any of the High Courts of Judicature at Fort William, Madras, and Bombay, or in a jail more than one hundred miles distant from the place where any Court, subordinate to a High Court, in which his evidence is required, is held, the Judge or presiding officer of the Court in which the evidence is so required shall, if he think it expedient that such person should be removed under this Act for the purpose of giving evidence in such Court, and if the said jail is situate within the local limits of the appellate jurisdiction of the High Court to which such Court is subordinate, apply in writing to the same High Court, and such High Court may, if it think fit, make an order in the form in the said Schedule A, directed to the officer in charge of the said jail. The High Court

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making the order shall send it to the Magistrate of the District or division of a District in which the person named therein is confined, and such Magistrate shall cause the order to be delivered to the officer in charge of the jail in which such person is confined. For the purposes of this section and Sections 3 and 4, the Chief Commissioner of British Burma shall be deemed to be a High Court : the Court of a Recorder shall be deemed to be subordinate to the said Chief Commissioner ; and every jail situate in British Burma shall be deemed to be situate within the local limits of the said Chief Commissioner's appellate jurisdiction.

8. *Persons confined beyond limits of appellate jurisdiction of High Court.*—In any case in which a person is confined within a jail situate beyond the local limits of the appellate jurisdiction of a High Court, any Judge of such Court may, if he think it expedient that such person should be removed under this Act, for the purpose of giving evidence in any criminal matter in such Court or in any Court subordinate thereto, apply in writing to the Local Government within the territories subject to which the said jail is situate ; and such Government may, if it think fit, direct that such person shall be so removed, subject to such rules regulating the escort of such prisoners as the Governor-General of India in Council may from time to time prescribe. To obtain the removal of a person confined in a jail situate beyond the territories for the time being under the administration of the Chief Commissioner of British Burma for the purpose of giving evidence in any criminal matter in the Court of a Recorder, such Recorder shall have the power conferred on a Judge of a High Court by the former part of this section, and the other provisions of such part shall, *mutatis mutandis*, apply.

9. *Prisoner to be brought up.*—Upon delivery of any order under this Act to the officer in charge of the jail in which the person named therein is confined, such officer shall cause him to be taken to the Court in which his attendance is required, so as to be present in such Court at the time in such order mentioned ; and shall cause him to be detained in custody in or near the Court until he shall have been examined or until the Judge or presiding officer of such Court shall authorize him to be taken back to the jail in which he was confined.

10. *Power to Government to exempt certain prisoners from operation of Act.*—The Governor-General of India in Council or the Local Government may, from time to time, by notification in the official Gazette, direct that any person or any class of persons shall not be removed from the jail in which he or they may be confined ; and thereupon, and so long as such notification remains in force, the provisions of this Act, other than those contained in Sections 12, 13, and 14, shall not apply to such person or class of persons.

11. *When jailor may disobey orders.*—When any person named in any order made under Section 3, Section 4, or Section 7 appears to be from sickness or other infirmity unfit to be removed, the officer in charge of the jail in which he is confined shall apply to the Magistrate of the District or division of a District in which such jail is situate, and if such Magistrate shall by writing under his hand declare himself to be of opinion that such person is from infirmity unfit to be removed ; or when any person named in any such order is under committal for trial ; or under a remand pending trial or pending a preliminary investigation ; or when any such person is in custody for a period which would expire before the expiration of the time required for removing him under this Act and for taking him back to the jail in which he is confined ; then and in every such case the officer in charge of the jail shall abstain from obeying such order, and shall send to the Court from which the order has been issued, a statement of his reason for not obeying the same : Provided that the said officer shall not so abstain when the order has been made under Section 3, and the person named in the order is confined under committal for trial, or under a remand pending trial or pending a preliminary investigation, and does not appear to be from sickness or other infirmity unfit to be removed, and the place where his

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evidence is required is not more than five miles distant from the jail in which he is confined.

### PART III.—*Commissions.*

12. *Commission for examination of prisoners.*—Whenever it shall appear to any Civil Court that the evidence of a person confined in any jail situate within the local limits of the appellate jurisdiction of such Court, if it be a High Court, or if it be not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, who for any of the causes mentioned in Section 10 or Section 11 cannot be brought up before it, is material in any matter depending before such Court, and whenever it shall appear to any such Court that the evidence of a person confined in any jail so situate and more than ten miles distant from the place at which such Court is held, is material in any such matter, and in any case in which the District Judge shall under Section 5 have declined to countersign the order for removal, the Court may, if it think fit, issue a commission under the provisions of the Code of Civil Procedure for the examination of such person in the jail in which he is confined.

13. *Commission for examination of prisoners beyond limits of appellate jurisdiction of High Court.*—Whenever it shall appear to any High Court that the evidence of a person confined in a jail situate beyond the local limits of its appellate jurisdiction is material in any civil matter depending before such Court, or before any Court subordinate thereto, the High Court may, if it think fit, issue a commission under the provisions of the Code of Civil Procedure for the examination of such person in the jail in which he is confined.

14. *Commission how to be directed.*—Every commission issued under Section 12 or Section 13 shall be directed to the District Court of the District wherein the jail in which such person is confined is situate, and such Court shall commit the execution of the commission to the officer in charge of such jail, or to such other person as the Court thinks fit.

### PART IV.—*Service of Process on Prisoners.*

15. *Process how served on prisoners.*—When any process directed to any person confined in any jail is issued from any Court, the same may be served by exhibiting to the officer in charge of such jail or prison the original of such process, and by depositing with him a copy thereof.

16. *Process served to be transmitted at prisoner's request.*—Every officer in charge of a jail upon whom any such service as is mentioned in Section 15 shall be made, shall, as soon as may be, cause the copy of the process so deposited with him to be shown and explained to the prisoner to whom it is directed, and shall thereupon endorse upon such process a certificate signed by him that the prisoner to whom the process is directed is a prisoner in the jail under his charge, and that he has received a copy thereof. Such certificate shall be sufficient *prima facie* evidence of the service of such process; and if the prisoner requests that the said copy be sent to any other person, and provides the cost of so sending it, the said officer shall cause the same to be so sent through the Post Office by registered letter.

### PART V.—*Miscellaneous.*

17. *Deposit of costs.*—No order in any civil matter shall be made by a Court under any of the provisions hereinbefore contained until the amount of the costs and charges of the execution of such order (to be determined by the Court) is deposited in such Court: Provided that if upon any application for such

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order it appear to the Court to which the application is made that the applicant has not sufficient means to meet the said costs and charges, the Court may pay the same out of any fund applicable to the contingent expenses of such Court, and every sum so expended may be recovered by Government from any person ordered by the Court to pay the same, as if it were costs of suit recoverable under the Code of Civil Procedure.

18. *Power to make rules.*—It shall be lawful for the Local Government, and in cases arising under Section 8, for the Governor-General of India in Council, to make rules consistent with this Act (1) for regulating the escort of prisoners to and from the Court in which their presence is required; (2) for regulating the amount to be allowed for the costs and charges of such escort; and (3) for the guidance of officers in all other matters connected with the enforcement of this Act; and from time to time to alter and add to the rules so made.

19. *Publication of rules.*—All such rules, alterations and additions shall be published in the official Gazette, and shall, from the date of such publication, be deemed to have the force of law.

20. *Power to declare who shall be deemed officer in charge of jail.*—The Local Government may also declare in each case what officer shall, for the purposes of this Act, be deemed to be 'the officer in charge of the jail.'

### SCHEDULE A.

Court of

To the officer in charge of the

(state name of jail)

You are hereby required to have the body of \_\_\_\_\_, now a prisoner in \_\_\_\_\_ under safe and sure conduct before the \_\_\_\_\_ at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ next by \_\_\_\_\_ of the clock in the forenoon of the same day, there to give testimony in a cause now pending before [or in a certain charge or prosecution now pending before \_\_\_\_\_ against \_\_\_\_\_ or as the case may be] and after the said \_\_\_\_\_ shall then and there have given his testimony before the said \_\_\_\_\_ or the said \_\_\_\_\_ shall dispense with his further attendance, cause him to be conveyed under safe and sure conduct back to the said jail.

day of

A. B.  
(Countersigned) C. D.

### SCHEDULE B.

Court of

To the officer in charge of the

(state name of jail)

You are hereby required to have the body of \_\_\_\_\_, now a prisoner in \_\_\_\_\_ under safe and sure conduct before the \_\_\_\_\_ at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ next by \_\_\_\_\_ of the clock in the forenoon of the same day, there to answer a charge now pending before \_\_\_\_\_ and, after such charge shall have been disposed of or the said \_\_\_\_\_ shall dispense with his further attendance, cause him to be conveyed under safe and sure conduct back to the said jail.

day of

A. B.  
(Countersigned) C. D.

## CORONERS.

### ACT No. IV. OF 1871.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 27th January 1871.)

AN ACT to consolidate and amend the laws relating to Coroners.

*Preamble.*—Whereas it is expedient to consolidate and amend the laws relating to Coroners in the Presidency Towns; It is hereby enacted as follows:—

#### I.—Preliminary.

1. *Short title.*—This Act may be called “The Coroners’ Act, 1871.” It extends to the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras, and Bombay.

2. *Repeal of enactments.*—The enactments mentioned in the first schedule hereto annexed are repealed to the extent specified in the third column of the said schedule.

#### II.—Appointment of Coroners.

3. *Coroners of Calcutta, Madras, and Bombay.*—Within the local limits of the ordinary original civil jurisdiction of each of the said High Courts, there shall be a Coroner. Such Coroners shall be called, respectively, the Coroner of Calcutta, the Coroner of Madras, and the Coroner of Bombay.

4. *Their appointment, suspension and removal.*—Every such officer shall be appointed and may be suspended or removed by the Local Government. Every person now holding such office shall be deemed to have been appointed under this Act.

5. *Coroners to be “public servants.”*—Every Coroner shall be deemed a public servant within the meaning of the Indian Penal Code.

6. *Power to hold other offices.*—Any Coroner may hold simultaneously any other office under Government.

*Note.*—Section 7 has been repealed by the Oaths Act, x. of 1873. See Section 16 of that Act.

#### III.—Duties and powers of Coroners.

8. *Jurisdiction to enquire into deaths.*—When a Coroner is informed that the death of any person has been caused by accident, homicide, suicide, or suddenly by means unknown, or that any person being a prisoner has died in prison, and that the body is lying within the place for which the Coroner is so appointed, the Coroner shall enquire into the cause of death. Every such enquiry shall be deemed a judicial proceeding within the meaning of Section 193 of the Indian Penal Code.

9. *Coroner to be sent for when prisoner dies.*—Whenever a prisoner dies in a prison situate within the place for which a Coroner is so appointed, the Superintendent of the prison shall send for the Coroner before the body is buried. Any Superintendent failing herein shall on conviction before a Magistrate be punished with fine not exceeding five hundred rupees. Nothing in the former part of this section applies to cases in which the death has been caused by cholera or other epidemic disease.

10. *Power to hold inquests on bodies within local limits wherever cause of death occurred.*—Whenever an inquest ought to be holden on any body lying dead within the local limits of the jurisdiction of any Coroner, he shall hold such inquest, whether or not the cause of death arose within his jurisdiction.



## CORONERS.

11. *Power to order body to be disinterred.*—A Coroner may order a body to be disinterred within a reasonable time after the death of the deceased person, either for the purpose of taking an original inquisition where none has been taken, or a further inquisition where the first was insufficient.

12. *Summoning jury.*—On receiving notice of any death mentioned in Section 8, the Coroner shall summon five, seven, nine, eleven, thirteen, or fifteen respectable persons to appear before him at a time and place to be specified in the summons, for the purpose of enquiring when, how, and by what means the deceased came by his death. Any inquest under this Act may be held on a Sunday.

13. *Opening Court.*—When the time arrives, the Coroner shall proceed to the place so specified, open the Court by proclamation, and call over the names of the jurors.

14. *Jurors to be sworn.*—When a sufficient jury is in attendance, he shall administer an oath to each juror to give a true verdict according to the evidence, and shall then proceed with the jury to view the body.

15. *View of body.*—The Coroner and the jury shall view and examine the body at the first sitting of the inquest, and the Coroner shall make such observations to the jury as the appearance of the body requires.

16. *Proclamation for witnesses.*—The Coroner shall then make proclamation for the attendance of witnesses, or, where the enquiry is conducted in secret, shall call in separately such as know anything concerning the death.

17. *Summoning witnesses.*—It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses; the Coroner shall enquire of such circumstances and the cause of the death; and if before or during the enquiry he is informed that any person can give evidence material thereto, may issue a summons requiring him to attend and give evidence on the inquest. Any person failing so to attend or give evidence shall be deemed to have committed an offence under Section 174 or 176 of the Indian Penal Code, as the case may be. For the purpose of causing prisoners to be brought up to give evidence, the Coroner shall be deemed a Criminal Court within the meaning of Act No. xv. of 1869 (*to provide facilities for obtaining the evidence and appearance of prisoners and for service of process upon them*).

18. *Post mortem examinations. Fees to medical witnesses.*—The Coroner may direct the performance of a *post mortem* examination, with or without an analysis of the contents of the stomach or intestines, by any medical witness summoned to attend the inquest: and every medical witness, other than the Chemical Examiner to Government, shall be entitled to such reasonable remuneration as the Coroner thinks fit.

19. *Evidence to be on oath. Evidence on behalf of accused.*—All evidence given under this Act shall be on oath, and the Coroner shall be bound to receive evidence on behalf of the party (if any) accused of causing the death of the deceased person. Witnesses unacquainted with the English language shall be examined through the medium of an interpreter, who shall be sworn to interpret truly as well the oath as the questions put to, and the answers given by, the witnesses. After each witness has been examined, the Coroner shall enquire whether the jury wish any further questions to be put to the witness, and if the jury wish that any such questions should be put, the Coroner shall put them accordingly.

20. *Coroner to take down evidence in writing.*—The Coroner shall commit to writing the material parts of the evidence given to the jury, and shall read or cause to be read over such parts to the witness and then procure his signature thereto. Any witness refusing so to sign shall be deemed to have committed an offence under Section 180 of the Penal Code. Every such deposition shall be subscribed by the Coroner.

21. *Adjournment of inquest.*—The Coroner may adjourn the inquest from time to time, and from place to place. Whenever the inquest is adjourned the

## CORONERS.

Coroner shall take the recognizances of the jurors to attend at the time and place appointed, and notify to the witnesses when and where the inquest will be proceeded with. The amount of such recognizances shall in each case be fixed by the Coroner.

22. *Coroner to sum up to jury.*—When all the witnesses have been examined the Coroner shall sum up the evidence to the jury, and the jury shall then consider of their verdict.

23. *Coroner to draw up inquisition.*—When the verdict is delivered the Coroner shall draw up the inquisition according to the finding of the jury, or, when the jury is not unanimous, according to the opinion of the majority.

24. *Contents of inquisition.*—Every inquisition under this Act shall be signed by the Coroner with his name and style of office and by the jurors, and shall set forth—(1) where, when, and before whom the inquisition is holden, (2) who the deceased is, (3) where his body lies, (4) the names of the jurors, and that they present the inquisition upon oath, (5) where, when, and by what means the deceased came by his death, and (6) if his death was occasioned by the criminal act of another, who is guilty thereof. If the name of the deceased be unknown, he may be described as a certain person to the jurors unknown. Every such inquisition shall be in the form set forth in the second schedule hereto annexed, with such variation as the circumstances of each case require.

25. *Procedure where verdict amounts to murder, culpable homicide, or killing by negligence.*—When the verdict is that the death has been caused by culpable homicide amounting to murder, or by culpable homicide not amounting to murder, or by a rash or negligent act not amounting to culpable homicide, the Coroner shall bind by recognizance any person knowing or declaring anything material touching such murder, homicide, or act to appear at the next criminal sessions at which the trial is to be, then and there to prosecute or give evidence against the party charged. The Coroner shall certify and subscribe such recognizances, and shall, immediately after the inquest, deliver them, together with the inquisition and evidence, to the proper officer of the Court in which the trial is to be.

26. *Warrant against person accused.*—The Coroner shall also, where the verdict justifies him in so doing, issue his warrant for the apprehension of the person accused, and commit him to prison until he is thence discharged by due course of law, or, if he be already in prison, issue a detainer to the officer in charge of the jail in which he is.

27. *Power to accept bail.*—In cases where the jury has found against any person a verdict of culpable homicide not amounting to murder or of killing by a rash or negligent act not amounting to culpable homicide, the Coroner may, if he thinks fit, accept bail with sufficient sureties for the appearance of such person at the next criminal sessions, and thereupon such person, if in custody of any officer of the Coroner's Court, or in any gaol under a warrant of commitment issued by the Coroner, shall be discharged therefrom.

28. *Warrant for burial.*—When the proceedings are closed, or before, if it be necessary to adjourn the inquest, the Coroner shall give his warrant for the burial of the body on which the inquest has been taken.

29. *Inquisitions not to be quashed for want of form.*—No inquisition found upon or by any inquest shall be quashed for any technical defect. In any case of technical defect, a Judge of the High Court may, if he thinks fit, order the inquisition to be amended, and the same shall forthwith be amended accordingly.

30. *Cessation of jurisdiction as to treasure trove, wrecks, &c.*—It shall no longer be the duty of the Coroner to enquire whether any person dying by his own act was or was not *felo de se*, to enquire of treasure trove or wrecks, to seize any fugitive's goods, to execute process, or to exercise as Coroner any jurisdiction not expressly conferred by this Act. A *felo de se* shall not forfeit his goods. Deodands are hereby abolished.

## CORONERS.

### IV.—*Coroners' Juries.*

31. *Fine on juror neglecting to attend.*—Whenever any person has been duly summoned to appear as a juror by a Coroner, and fails or neglects to attend at the time and place specified in the summons, the Coroner may cause him to be openly called in his Court three times to appear and serve as a juror; and upon the non-appearance of such person, and proof that such summons has been served upon him, or left at his usual place of abode, may impose such fine upon the defaulter, not exceeding fifty rupees, as to the Coroner seems fit.

32. *Certificate as to defaulting juror.*—The Coroner shall make out and sign a certificate, containing the name and surname, the residence and trade or calling of every person so making default, together with the amount of the fine so imposed, and the cause of such fine, and shall send such certificate to one of the Magistrates of the place of which he is the Coroner, and shall cause a copy of such certificate to be served upon the person so fined, by having it left at his usual place of residence, or by sending the same through the Post Office, addressed as aforesaid and registered.

33. *Levy of fine.*—Thereupon such Magistrate shall cause the fine to be levied in the same manner as if it had been imposed by himself.

34. *Jurors not to be twice summoned within the year.*—Unless in case of necessity, no person who has appeared, or has been summoned to appear, as a juror on an inquest, and has not made default, shall, within one year after such appearance or summons, be summoned to appear as a juror under this Act.

35. *Jurors on inquest on prisoner.*—When an inquest is held on the body of a prisoner dying within a prison, no officer of the prison and no prisoner confined therein shall be a juror on such inquest.

### V.—*Rights and Liabilities of Coroners.*

36. *Coroner's salary.*—Every Coroner shall be entitled to such salary for the performance of the duty of his office as is prescribed in that behalf by the Governor-General in Council.

37. *Disbursements to be repaid.*—All disbursements duly made by a Coroner for fees to medical witnesses, hire of rooms for the jury and the like, shall be repaid to him by the Local Government.

38. *Power to appoint deputy. Oath to be taken by deputy.*—Every Coroner may from time to time, with the previous sanction of the Local Government, appoint, by writing under his hand, a proper person to act for him as his deputy in the holding of inquests, and such deputy shall take and subscribe, before one of the Judges of the High Court, an oath that he will faithfully discharge the duties of his office. All inquests taken and other acts done by any such deputy, under or by virtue of any such appointment, shall be deemed to be the acts of the Coroner appointing him. Provided that no such deputy shall act for any such Coroner except during the illness of the said Coroner, or during his absence for any lawful and reasonable cause. Every such appointment may at any time be cancelled and revoked by the Coroner by whom it was made.

39. *Exemption from serving on juries.*—No Coroner or Deputy Coroner shall be liable to serve as a juror.

40. *Privilege from arrest.*—Coroners and Deputy Coroners shall be privileged from arrest while engaged in the discharge of their official duty.

41. *Penalty for failure to comply with Act.*—Any Coroner or Deputy Coroner failing to comply with the provisions of this Act, or otherwise misconducting himself in the execution of his office, shall be liable to such fine as the Chief Justice of the High Court, upon summary examination and proof of the failure or misconduct, thinks fit to impose.

42. *Limitation of suits.*—No proceeding for anything done under this Act, or for any failure to comply with its provisions, shall be commenced or prosecuted after tender of sufficient amends.

# CORONERS.

## FIRST SCHEDULE.

Number and year.	Title.	Extent of Repeal.
Act III., cap. fifty- two.	An Act for continuing in the East India Company, for a further term, the possession of the British territories in India, together with their exclusive trade, under certain limitations; for establishing further Regulations for the government of the said territories and the better administration of justice within the same; for appropriating to certain uses the revenues and profits of the said Company; and for making provision for the good order and government of the towns of Calcutta, Madras and Bombay.	Section one hundred and fifty-seven.
Act IV., cap. seventy- four.	An Act for improving the administration of criminal justice in the East Indies.	Sections five and six and (so far as it relates to Coroners) section fifty-one.
No. IV. of 1848 ...	An Act for regulating Coroners' Juries.	The whole.
No. XLV. of 1850 ...	An Act to declare the law as to the jurisdiction of Coroners.	The whole.

## SECOND SCHEDULE.

### Form of Inquisition.

INQUISITION taken at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 187 ,  
 by E F, Coroner of \_\_\_\_\_ on view of the body of A B then and there lying  
 upon the oath of G H, I J, K L, and M N, then and there duly sworn and charged  
 to inquire when, how, and by what means the said A B came to his death.  
 We, the said jurors, find unanimously [or by a majority of \_\_\_\_\_] that the death  
 of the said A B was caused, on or about the \_\_\_\_\_ day of \_\_\_\_\_ 187 , by [here state the  
 cause of death as in the following examples—

1. *Cases of homicide*—a blow on the head with a stick inflicted on him by C D,  
 under such circumstances that the act of C D was  
 justifiable [or accidental] homicide.  
 —a stab on the heart with a knife inflicted on him by C D,  
 under such circumstances that the act of C D was  
 culpable homicide not amounting to murder, [or culp-  
 able homicide amounting to murder, or a rash or  
 negligent act not amounting to culpable homicide].
2. *Cases of accident*—falling out of a boat into the river Hughli, whereby he  
 was drowned.  
 —a kick from a horse which fractured his skull and rup-  
 tured blood-vessels in his head.
3. *Cases of suicide*—shooting himself through the head with a pistol.  
 —arsenic, which he voluntarily administered to himself.
4. *Cases of sudden death by means unknown*—disease of the heart.  
 —apoplexy.  
 —sunstroke.

And so say the jurors upon their oath aforesaid.

In witness our hands. E F, Coroner of \_\_\_\_\_  
 G H, I J, K L, M N, O P (jurors).

## PRISONERS.

### ACT No. V. OF 1871.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 27th January 1871.)

AN ACT to consolidate the laws relating to Prisoners confined by order of a Court.

*Preamble.*—For the purpose of consolidating the laws relating to prisoners confined by order of a Court ; It is hereby enacted as follows :—

#### I.—Preliminary.

1. *Short title.*—This Act may be called “The Prisoners’ Act, 1871” : It extends to the whole of British India.

2. *Repeal of Acts.*—The Acts mentioned in the schedule hereto annexed are repealed to the extent specified in the third column of the said schedule.

#### II.—Prisoners in the Presidency Towns.

3. *Warrants and writs to be directed to Police Officers.*—All writs or warrants for the arrest or apprehension of any person, issued or awarded by the High Court in the exercise of its ordinary, extraordinary, or other criminal jurisdiction, shall be directed to and executed by any officer of Police within the local limits of such jurisdiction.

4. *Power to appoint Superintendents of Presidency Prisons.*—The Local Government may appoint officers who shall have authority to receive and keep prisoners committed to their custody under the provisions of this Part. All such officers appointed under any Act hereby repealed, shall be deemed to be appointed under this Act. Such officers shall be called, in Calcutta, the Superintendent of the Presidency Prison, in Madras, the Superintendent of Prisons for the town of Madras, and in Bombay, by such title or respective titles as the Local Government from time to time directs. Every such officer is hereinafter referred to as “the Superintendent.”

5. *Superintendents to detain persons committed.*—The Superintendent is hereby authorized and required to keep and detain all persons duly committed to his custody pursuant to the provisions of this Act, or otherwise, by any Court, Judge, Justice of the Peace, Magistrate of Police, Coroner, or other public officer lawfully exercising civil or criminal jurisdiction according to the exigency of any writ, warrant or order by which such person has been committed, or until such person is discharged by due course of law.

6. *Superintendents to return writs, &c., after execution or discharge.*—The Superintendent shall forthwith after the execution of every such writ, order, or warrant, except warrants of commitment for trial, or after the discharge of the person committed thereby, return such writ, order, or warrant to the Court or other officer by which or by whom the same has been issued or made, together with a certificate endorsed thereon and signed by the Superintendent, showing how the same has been executed, or why the person committed thereby has been discharged from custody before the execution thereof.

7. *Delivery of persons sentenced to imprisonment or death.*—Whenever any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to imprisonment or to death, the Court shall cause him to be delivered to the said Superintendent, together with the warrant of the said Court, and such warrant shall be executed by the Superintendent and returned by him to the High Court when executed.

8. *Delivery for intermediate custody of persons sentenced to transportation or penal servitude.*—Whenever any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to transportation or penal servi-

## PRISONERS.

le, the Court shall cause him to be delivered for intermediate custody to the perintendent, and the imprisonment of such person shall have effect from h delivery.

1. *Order under Mutiny Act for intermediate custody.*—Whenever any Judge of igh Court makes, under any Act for the time being in force for punishing tiny and desertion, and for the better payment of the Army and their rters, an order for the intermediate custody of an offender sentenced by a rt Martial holden in India, the Judge shall order such offender to be ained for intermediate custody by the Superintendent.

Q. *Committals by High Court in execution of a decree or for contempt.*—When- any person is committed by the High Court, whether in execution of a ee or for contempt of Court, or other cause, he shall be taken by the officer e appointed for that purpose by such Court, and shall be delivered to the erintendent, together with a warrant of commitment.

1. *Delivery of persons sentenced by Police Magistrate.*—Whenever any person entenced by a Magistrate of Police for the town of Calcutta, Madras, or bay, to imprisonment, either absolutely or for default of payment of any imposed by any such Magistrate, or is committed to prison for failure to ecurity to keep the peace and to be of good behaviour, the Magistrate l cause him to be delivered to the Superintendent, together with a warrant e Court.

2. *Delivery of persons committed by Justice or Magistrate or Coroner for trial by i Court.*—Every person committed by a Justice of the Peace or Magistrate oner for trial by the High Court in the exercise of its original criminal diction shall be delivered to the Superintendent, together with a warrant ommitment, directing him to have the body of such person before the t for trial, and the Superintendent shall, as soon as practicable, cause such on to be taken before the Court at a Criminal Session of the said Court, her with the warrant of commitment, in order that he may be dealt with ding to law.

3. *Custody, pending enquiries under Act xxiii. of 1861, Section 8.*—Pend- any such enquiry as is mentioned in Section 8 of Act No. xxiii. of 1861 end Act viii. of 1859), which the High Court considers it necessary to e, the defendant may be delivered by the officer of the said Court to the rintendent, subject to the provisions as to deposit of fees and as to release ecurity contained in the same section, and the Superintendent is hereby orized and required to detain such defendant in safe custody until he is livered to the officer of the Court for the purpose of being taken before the Court in pursuance of an order of the said Court, or of a Judge thereof, or he is released by due course of law.

4. *Delivery of persons arrested in pursuance of warrant of High Court or Small e Court.*—Every person arrested in pursuance of a writ, warrant, or order e High Court, in the exercise of its original civil jurisdiction, or in pur- e of a warrant of any Court established in Calcutta, Madras, or Bombay r Act No. ix. of 1850 (*for the more easy recovery of small debts and demands cutta, Madras and Bombay*), or in pursuance of a warrant issued under n 3 of this Act, shall be brought without delay before the Court by e, or by a Judge of which, the writ, warrant, or order was issued, awarded, e, or before a Judge thereof, if the said Court, or a Judge thereof, is then e for the exercise of original jurisdiction; and if such Court, or a Judge f, is not then sitting for the exercise of original jurisdiction, shall, unless e of the said Court otherwise orders, be delivered to the Superintendent ermediate custody, and shall be brought before the said Court, or a e thereof, at the next sitting of the said Court, or of a Judge thereof, for ercise of original jurisdiction, in order that such person may be dealt according to law; and the said Court or Judge shall have power to make ard all necessary orders or warrants for that purpose.

## PRISONERS.

15. *Warrants under Regulations for confinement of State prisoners.*—Any warrant of commitment under Regulation III. of 1818 of the Bengal Code (for the Confinement of State Prisoners), Regulation II. of 1819 of the Madras Code (for the confinement of State Prisoners), and Regulation XXV. of 1827 of the Bombay Code (for the Confinement of State Prisoners, and for the Attachment of the Lands of Chieftains and others for Reasons of State), may be directed to the Superintendent in the same manner as the same might have been directed to the Sheriff under Act No. xxxiv. of 1850 (for the better Custody of State Prisoners), and Act No. iii. of 1858 (to amend the Law relating to the arrest and detention of State Prisoners).

### III.—Prisoners in the Mofussil.

16. *Officers in charge of prisons may give effect to sentences of certain Courts.*—Officers in charge of prisons situate outside the local limits of the ordinary original civil jurisdictions of the High Courts of Judicature at Fort William, Madras, and Bombay, shall be competent to give effect to any sentence or order or warrant for the detention of any person passed or issued by any Court or tribunal acting under the authority of Her Majesty, or of the Governor-General in Council, or of any Local Government.

17. *Warrant of officer of such Court to be sufficient authority.*—A warrant under the official signature of an officer of such Court or tribunal shall be sufficient authority for holding any prisoner in confinement, or for sending any prisoner for transportation beyond sea, in pursuance of the sentence passed upon him.

18. *Procedure where jailor doubts the legality of warrant sent to him for execution.*—Any officer in charge of a prison doubting the legality of any warrant sent to him for execution under this Part, or the competency of the person whose official seal and signature are affixed thereto to pass the sentence and issue such warrant, shall refer the matter to the Local Government, by whose order on the case such officer and all other public officers shall be guided as to the future disposal of the prisoner. Pending any such reference, the prisoner shall be detained in such manner and with such restrictions or mitigations as may be specified in the warrant.

19. *Imprisonment in British India of persons convicted of certain offences in Native States.*—The Local Government may authorize the reception, detention, or imprisonment in any place under such Government, for the periods specified in their respective sentences, of persons sentenced within the territories of any Native Prince or State in alliance with Her Majesty to imprisonment or transportation for any of the following offences :—Counterfeiting coin, uttering counterfeit coin, murder, culpable homicide not amounting to murder, being a thug, voluntarily causing grievous hurt, administering poison, kidnapping, selling minors for purposes of prostitution, rape, robbery, dacoity, dacoity with murder, robbery or dacoity with attempt to cause death or grievous hurt, attempt to commit robbery or dacoity when armed with a deadly weapon, making preparation to commit dacoity, belonging to a gang of dacoits, dishonest misappropriation of property, breach of trust, house-burning, house-breaking, forgery, and theft of cattle; or for an attempt to commit any of the above offences, or for abetment, within the meaning of the Indian Penal Code, of suicide by burning or burying alive, or of any of the other offences above specified, or for such other offences as the Governor-General in Council, from time to time, by order published in the *Gazette of India*, thinks fit to prescribe: Provided that such sentences have been pronounced after trial before a tribunal in which an officer of Government, duly authorized in that behalf by such Native Prince or State, or by the Governor-General in Council, is one of the presiding Judges.

20. *Certificate of conviction. Copy of proceedings.*—Every officer of Government so authorized as aforesaid shall forward with every prisoner a certificate of his conviction, and a copy of the proceedings held at the trial, that the same may be forthcoming for reference at the place where the sentence of imprisonment or transportation is carried into effect.

IV.—*Convicts sentenced to Penal Servitude.*

21. *Persons sentenced to penal servitude where sent, and how dealt with.*—Every person sentenced to be kept in penal servitude may, during the term of the sentence, be confined in such prison within British India as the Governor-General in Council by general order, from time to time, directs; and may, during such time, be kept to hard labour; and may, until he can conveniently be removed to such prison, be imprisoned, with or without hard labour, and dealt with in all other respects as persons sentenced by the convicting Court to rigorous imprisonment may, for the time being, by law be dealt with. The time of such intermediate imprisonment, and the time of removal from one prison to another, shall be taken and reckoned in discharge or part discharge of the term of the sentence.

22. *Law respecting convicts sentenced to transportation or imprisonment with hard labour applied to persons sentenced to penal servitude.*—All Acts and Regulations now in force within British India, with respect to convicts under sentence of transportation, or under sentence of imprisonment with hard labour, shall, so far as may be consistent with the express provisions of this Act, be construed to apply to persons under any sentence of penal servitude.

23. *Power to grant license to convict sentenced to penal servitude.*—The Governor-General in Council may grant to any convict sentenced to be kept in penal servitude, a license to be at large within British India or in such part thereof as in such license is expressed, during such portion of his term of servitude and upon such conditions as to the Governor-General in Council seem fit. The Governor-General in Council may at any time revoke or alter such license.

24. *Holder of license to be allowed to go at large.*—So long as such license continues in force and unrevoked, such convict shall not be liable to imprisonment or penal servitude by reason of his sentence, but shall be allowed to go and remain at large according to the terms of such license.

25. *Apprehension of convict where license revoked.*—In case of the revocation of any such license as aforesaid, any Secretary to the Government of India may, by order in writing, signify to any Justice of the Peace or Magistrate that such license has been revoked, and require him to issue a warrant for the apprehension of the convict to whom such license was granted, and such Justice or Magistrate shall issue his warrant accordingly.

26. *Execution of warrant.*—Such warrant may be executed by any officer to whom it may be directed or delivered for that purpose in any part of British India, and shall have the same force in any place within British India as if it had been originally issued or subsequently endorsed by the Justice of the Peace, or Magistrate, or other authority having jurisdiction in the place where the same is executed.

27. *Apprehended convict to be brought up for re-commitment.*—The convict, when apprehended under such warrant, shall be brought, as soon as conveniently may be, before the Justice or Magistrate by whom it has been issued, or before some other Justice or Magistrate of the same place, or before a Justice or Magistrate having jurisdiction in the district in which the convict is apprehended. Such Justice or Magistrate shall thereupon make out his warrant under his hand and seal, for the re-commitment of the convict to the prison from which he was released by virtue of his said license.

28. *Re-commitment.*—Such convict shall be re-committed accordingly, and shall thereupon be liable to be kept in penal servitude for such further term as, with the time during which he may have been imprisoned under the original sentence and the time during which he may have been at large under an unrevoked license, is equal to the term mentioned in the original sentence.

29. *Penalty for breach of condition of the license.*—If a license be granted under Section 23 upon any condition specified therein, and the convict to whom the license is granted violates any such condition, or goes beyond the limits



## PRISONERS.

specified in the license, or, knowing of the revocation of such license, neglects forthwith to surrender himself, or conceals himself, or endeavours to avoid being apprehended, he shall be liable upon conviction to be sentenced to penal servitude for a term not exceeding the full term of penal servitude mentioned in the original sentence.

### V.—*Removal of Prisoners.*

30. *Removal from one jail to another in territories under Local Government.*—When any person is, or has been, sentenced to imprisonment by any Court, the Local Government, or (subject to its orders and under its control) the Inspector General of Jails, may order his removal during the period prescribed for his imprisonment, from the jail or place in which he is confined to any other jail or place of imprisonment within the territories subject to the same Local Government.

31. *Removal of lunatic prisoners.*—Whenever it appears to the Local Government that any person, detained or imprisoned under any order or sentence of any Magistrate or Court is of unsound mind, such Government, by a warrant setting forth the grounds of belief that such person is of unsound mind, may order his removal to a lunatic asylum, or other fit place of safe custody, within the territories subject to the same Government, there to be kept and treated as the Local Government directs during the remainder of the term of imprisonment ordered by the sentence; or, if it be certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be detained under medical care or treatment, then until he is discharged according to law. When it appears to the said Government that such prisoner has become of sound mind, the Local Government by a warrant directed to the person having charge of the prisoner, shall remand the prisoner to the prison from which he was removed, if then still liable to be kept in custody, or if not shall order him to be discharged. The provisions of Section 9 of Act xxxvi. of 1858 (*relating to Lunatic Asylums*) shall apply to every person confined in a lunatic asylum under this section after the expiration of the term of imprisonment to which he has been sentenced; and the time during which he has been so confined shall be reckoned as part of such term.

32. *Government of India may order removal of prisoners from one prison to another.*—When any person is, or has been, sentenced to imprisonment by any Court, the Governor General in Council may order his removal during the period prescribed for his imprisonment, from the prison in which he is confined to any other prison in British India.

### VI.—*Management of Transported Convicts.*

33. *Power to appoint persons to whom convicts shall be delivered.*—The Governor-General in Council may appoint the Governor or other authority at any place in British India, or one or more Superintendents at any such place, as the persons to whom convicts undergoing transportation shall be delivered.

34. *Power to make rules as to convicts.*—The Governor-General in Council may, from time to time, prescribe rules as to the following matters:—The classification of convicts; their confinement, treatment, discipline, and employment; their punishment for misbehaviour, disorderly conduct, neglect, or disobedience; and the manner in which the proceeds (if any) of their employment shall be disposed of.

### VII.—*Discharge of Convicts.*

35. *Discharge of convicts recommended for pardon.*—Any Court established under the twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four, may in any case in which it has recommended to Her Majesty the granting of a free pardon to any convict, permit him to be at liberty on his own recognizance.

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## SCHEDULE.

(See section 2.)

Number and year of Act.	Subject or Title.	Extent of repeal.
VII. of 1837 . .	Charter Courts' power to discharge Convicts recommended for pardon.	The whole.
XVI. of 1840 . .	An Act concerning the management of Convicts transported to places within the territories of the East India Company.	The whole.
XXIV. of 1855 . .	An Act to substitute penal servitude for the punishment of Transportation in respect of European and American Convicts, and to amend the law relating to the removal of such Convicts.	Sections five, six, seven, nine, ten, eleven, and twelve.
XVII. of 1860 . .	An Act to repeal Act V. of 1858 (for the punishment of certain offenders who have escaped from jail, and of persons who shall knowingly harbour such offenders) and to make certain provisions in lieu thereof.	The whole.
XXV. of 1861 } VIII. of 1869 }	The Code of Criminal Procedure	Sections forty-nine, forty-nine A, and three hundred and ninety-six.
VIII. of 1863 . .	An Act for the amendment of the law relating to the confinement of prisoners sentenced by Courts acting under the authority of Her Majesty, and by certain other Courts, and of prisoners convicted of offences in Native States.	The whole.
VIII. of 1865 . .	An Act to make valid the imprisonment of certain persons arrested under the process of the High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original Civil jurisdiction.	The whole.
II. of 1867 . .	An Act to make further provision for the removal of prisoners.	The whole.
XII. of 1867 . .	An Act to amend the law relating to the custody of prisoners within the local limits of the original jurisdiction of Her Majesty's High Courts of Judicature at Fort William in Bengal, Madras, and Bombay.	The whole.
XXVI. of 1869 . .	An Act to correct a clerical error in Act No. VIII. of 1863.	The whole.

## EXCISE.

### ACT No. X. OF 1871.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 24th March 1871.)

AN ACT to consolidate and amend the laws relating to the Excise Revenue in Northern India, British Burma and Coorg.

*Preamble.*—Whereas it is expedient to consolidate and amend the laws in force in Northern India, British Burma and Coorg relating to the manufacture of spirits, the sale of spirituous and fermented liquors and intoxicating drugs, and the collection of the revenue derived therefrom. It is hereby enacted as follows :—

#### I.—Preliminary.

1. *Short title.*—This Act may be called “The Excise Act, 1871.” It extends to the territories respectively under the government of the Lieutenant-Governors of the North-Western Provinces and the Panjáb, and under the administration of the Chief Commissioners of Oudh, the Central Provinces, British Burma and Coorg.

*Note.*—Section 2 is repealed by Act xii. of 1873.

3. *Interpretation-clause.*—In this Act, “Chief Revenue Authority” means,—in the territories subject to the Lieutenant-Governor of the North-Western Provinces, the Board of Revenue, in the Panjáb and Oudh, the Financial Commissioner, and in the Central Provinces, British Burma and Coorg, the Chief Commissioner. “Collector” includes any Revenue Officer in independent charge of a District and a Superintendent of Excise Revenue. “Magistrate” means any Magistrate exercising powers not less than those of a Subordinate Magistrate of the first class. “Country-spirit” means any spirit made by the native process of distillation. “Intoxicating drugs” includes ganja, bhang, charas, opium, and every preparation and admixture of the same.

4. *Saving of Act No. xvi. of 1863.*—Nothing herein contained affects Act No. xvi. of 1863 (to make special provision for the levy of the Excise Duty payable on Spirits used exclusively in Arts and Manufactures or in Chemistry.)

#### II.—Manufacture of Spirits and Fermented Liquor.

5. *English distilleries not to be constructed or worked without license.*—No person shall construct or work a distillery after the manner in which distilleries are constructed and worked in England, without a license under the hand of the Collector of the District in which such distillery is situated.

6. *Chief Revenue Authority to prescribe rules for regulating English distilleries.*—The Chief Revenue Authority may from time to time make rules relative to (a) the granting of licenses under section 5, (b) the notices to be given by the proprietor of a licensed distillery when he commences and discontinues work, (c) the size and description of the stills, (d) the passing and storing of the spirits, (e) the inspection and examination of the distillery and warehouses, and of the spirits manufactured and stored therein, (f) the furnishing of statements and lists of such spirits, and of the stills, coppers, casks, and other utensils used in the distillery.

7. *Collectors may establish distilleries for country spirits.*—The Collector, with the sanction of the Chief Revenue Authority, may (a) establish at any place within his jurisdiction a distillery in which spirits may be manufactured after the Native process, (b) from time to time fix limits within which no country spirits, except such as are manufactured at the said distillery, shall be intro-

## EXCISE.

duced or sold without a special pass from the Collector, and within which no stills shall be constructed or worked, or spirits manufactured, except at the said distillery, and (c) discontinue any distillery so established.

8. *Chief Revenue Authority may prescribe rules for distilleries.*—The Chief Revenue Authority may from time to time make rules relative to (a) the management of distilleries established under Section 7, (b) the conditions on which spirits may be manufactured in the said distilleries, and (c) the passes to be issued for the conveyance of such spirits to the shops of the vendors.

9. *Breweries not to be constructed or worked without license.*—No person shall construct or work a brewery, or manufacture any description of malt liquor, without a license from the Collector. The Chief Revenue Authority may from time to time make rules relative to the granting of licenses for constructing and working breweries.

10. *Sanction to rules under Sections 6, 8, and 9.*—Except in the Central Provinces, British Burma and Coorg, the sanction of the Local Government is required to validate rules under Sections 6, 8, and 9.

11. *Prohibition of unlicensed manufacture of country spirits.*—No person shall manufacture spirits after the Native process except under license from the Collector.

*Note.*—Sections 12 to 51 relate to the sale of spirits, duties, farm of duties, licenses, and powers of officers, under this Act.

## VIII.—Penalties.

52. *For constructing or working a distillery without license.*—Whoever constructs or works a distillery after the English method, without a license from the Collector, shall for every such offence be punished with fine not exceeding one thousand rupees; and all spirits manufactured at any such distillery, and all materials and implements collected for the purpose of such manufacture, shall be liable to confiscation.

53. *For non-observance of rules prescribed by Chief Revenue Authority.*—Every proprietor or manager of a licensed distillery constructed and worked after the English method, who omits to furnish any notice or any statement or list required by the rules prescribed by the Chief Revenue Authority under Section 6, or wilfully does anything in contravention of the said rules, shall for every such offence be punished with fine not exceeding two hundred rupees; and if any such offence be committed a second time with respect to the same distillery, the Collector may withdraw the license granted for the working of such distillery.

54. *For removing spirituous liquors without payment of duty.*—Whoever removes or attempts to remove, from any licensed distillery constructed and worked after the English method, any spirituous liquors upon which the duty has not been paid, or for the duty on which a bond has not been executed, or any spirituous liquors for which the Collector has not issued a pass, shall for every such offence be punished with fine not exceeding one thousand rupees; and the liquors, together with the vessels containing the same, and the animals and conveyances used in carrying them, shall be liable to confiscation. If it appear to the Collector that the offence was committed with the consent or knowledge of the proprietor or manager, the Collector may withdraw the license granted for the construction and working of the distillery from which such liquors have been removed or attempted to be removed.

55. *For irregular re-land of spirituous liquors.*—Whoever re-lands, or attempts to re-land, any spirituous liquors shipped for exportation, without a special pass from the Collector of Revenue at the place of exportation, shall for every such offence be punished with fine not exceeding five hundred rupees; and the liquors, together with the casks and vessels containing the same, and the carts, boats, and animals employed in carrying them, shall be liable to confiscation.

56. *For working brewery without license.*—Whoever constructs or works a

brewery, or manufactures malt liquor, without a license, shall for every such offence be punished with fine not exceeding five hundred rupees.

57. *For refusing to produce license. For breach of license.*—Every person licensed to manufacture country spirits, or to sell spirituous or fermented liquors or intoxicating drugs, who fails to produce his license on the demand of any Excise officer, or who commits any act in breach of any of the conditions of his license not otherwise provided for in this Act, shall for every such offence be punished with fine not exceeding fifty rupees.

58. *For sale in contravention of license.*—Every licensed retail vendor, who sells any larger quantity of spirituous or fermented liquors, or intoxicating drugs, than is allowed to be sold by retail by this Act, and every licensed wholesale vendor who makes a retail sale, shall for every such offence be punished with fine not exceeding two hundred rupees; provided that nothing in this section shall be held to prohibit the grant to the same person of both wholesale and retail licenses, subject to the provisions of this Act.

59. *For permitting drunkenness, &c., in shop.*—Every person licensed to sell spirituous or fermented liquors, or intoxicating drugs, who permits drunkenness, riot, or gaming in his shop, or permits persons of notoriously bad character to meet or remain therein, or receives any wearing apparel or other effects in barter for liquors or drugs, shall for every such offence be punished with fine not exceeding two hundred rupees.

60. *For conveying country spirits from distillery without pass, &c.*—Whoever conveys or attempts to convey any country spirits from a distillery established under Section 7 without a pass, or exceeding the quantity for which a pass has been granted, or introduces or attempts to introduce any country spirits manufactured at another place into the limits fixed for the consumption of spirits manufactured at such distillery, without a special pass from the Collector, shall for every such offence be punished with fine not exceeding five hundred rupees.

61. *For contravening rules prescribed by Chief Revenue Authority.*—Whoever wilfully contravenes any rule prescribed by the Chief Revenue Authority for the management of a distillery established as aforesaid, otherwise than as provided for in the last preceding section, shall for every such offence be punished with fine not exceeding fifty rupees.

62. *For illicit manufacture or sale of country spirits, &c.*—Every person other than a licensed manufacturer who manufactures any country spirits, and every person other than a licensed vendor, or a person duly authorised to supply licensed vendors, who sells any spirituous or fermented liquors, or intoxicating drugs, and every person authorised to supply licensed vendors, who sells any such liquors or drugs to any person other than a licensed vendor, shall for every such offence be punished with fine not exceeding five hundred rupees. Nothing in this section or in Section 12 applies to the sale by auction of any spirituous liquors, wines, or beer purchased by any person for his private use, and so disposed of upon his quitting a station or after his decease.

63. *For illegal possession of country spirits, &c.*—Every person, other than a licensed manufacturer or vendor, or a person duly authorized to supply licensed vendors, who has in his possession any larger quantity of country spirits, or *tári*, or *pachwái*, or intoxicating drugs, except opium, than may legally be sold by retail under the provisions of Section 19, or transports by land or by water, or has in his possession, any spirituous liquors made at a distillery worked according to the English method, or any imported spirituous or fermented liquors, in larger quantity than two gallons, without a pass from the Collector or other officer duly empowered in that behalf, shall for every such offence be punished with fine not exceeding two hundred rupees; and the liquors and drugs, together with the vessels, packages, and coverings in which they are found, and the animals and conveyances used in carrying them, shall be liable to confiscation. Provided that nothing in this section extends to any

spirituous liquors, wines, or beer, purchased by any person for his private use and not for sale.

64. *Exceptions as to tári, ganja and bhang.*—The provisions of the two last preceding sections, so far as they relate to the sale and possession of fermented liquors, do not apply to the sale and possession of tári the produce of the date tree, when supplied or used for the manufacture of gúr or molasses; and the provisions of the said sections relating to the sale and possession of intoxicating drugs, do not apply to the sale and possession of ganja or bhang by the cultivators of the plants which produce those drugs respectively. Every such cultivator selling ganja or bhang in breach of the prohibition contained in Section 20, shall for every such offence be punished with fine not exceeding five hundred rupees.

65. *For possessing more opium than five tolas weight.*—Every person, other than a licensed vendor, who has in his possession a greater quantity of opium than five tolas weight, shall for every such offence be punished with fine not exceeding five hundred rupees, unless the opium found in his possession exceeds the weight of thirty-one sers and a quarter, in which case the penalty may be increased at a rate not exceeding sixteen rupees the ser for all the opium so found in excess of that weight; and the opium, together with the vessels, packages, and coverings in which it is found, and the animals and conveyances used in carrying it, shall be liable to confiscation.

66. *Exception in favour of.*—Nothing in Section 65 applies to the persons and circumstances hereinafter specified, namely:—(a) Authorized opium cultivators having newly extracted opium in their possession during the usual period between the full growth of the poppy and the delivery of the produce to the opium agent. (b) Travellers and visitants from foreign States or countries having in their possession any quantity of foreign opium not exceeding two sers, or, in British Burma, five tolas, the produce of such foreign States and countries, and intended for the private use of such travellers and visitants, or their attendants, and not for sale or barter. (c) Dealers in horses travelling with strings of horses from beyond the limits of British India, and having in their possession opium, the produce of foreign States or countries, not exceeding in quantity the proportion of ten tolas weight for each horse. If opium be found in the possession of any such traveller, visitant, or dealer in horses in excess of the quantities above specified, such excess shall be liable to confiscation; but the person in whose possession it may be found shall not be subject to any further penalty.

67. *For sale of adulterated opium, &c., by licensed vendors.*—Every licensed vendor, who sells or offers for sale opium adulterated with any foreign substance not being a preparation or admixture of opium for the sale of which he has taken out a license, or, who, except in districts exempted from the operation of Section 18, sells or has in his possession any opium other than the opium supplied to him from the Government stores, shall for every such offence be punished with fine not exceeding five hundred rupees, and the license held by him shall be withdrawn, and the opium, together with the vessels or packages in which it is found, shall be seized and confiscated.

68. *For conniving at illicit manufacture or sale of spirits, &c.*—Every proprietor, farmer, tahsildár, gumáshta, or other manager of land, who authorizes or connives at the manufacture of country spirits or the sale of spirituous or fermented liquors or intoxicating drugs by any unlicensed person, shall for every such offence be punished with fine not exceeding five hundred rupees.

69. *On police neglecting to assist.*—Any Police officer who, without lawful excuse, neglects or refuses to assist as aforesaid, and any dargha or other officer in charge of a Police station, who, on application made by an Excise officer under Section 45, fails to attend a search himself, or to depute a subordinate officer not being below the grade of a jamadár, shall for every such offence be punished with fine not exceeding five hundred rupees.

70. *For maliciously giving false information.*—Whoever maliciously gives false information against any person as being engaged in the unlawful manufacture of spirits, or as selling or having in his possession any spirituous or fermented liquors or intoxicating drugs in contravention of this Act, and so procures that such person be arrested or that any house, boat, or other place be searched, to the injury or annoyance of such person, or any other person whatsoever, shall for every such offence be punished with fine not exceeding five hundred rupees, or with imprisonment for a term not exceeding six months, or with both. Such fine or any part thereof may be paid to the person aggrieved.

71. *For vexatious search or seizure.*—Any Excise officer who without reasonable ground of suspicion, searches or causes to be searched any house, boat, or other place, or vexatiously and unnecessarily seizes the moveable property of any person, on the pretence of seizing or searching for any spirituous liquors or intoxicating drugs liable to confiscation under this Act, or vexatiously and unnecessarily arrests any person, or commits any other excess not required for the execution of his duty, shall for every such offence be punished with fine not exceeding five hundred rupees. Such fine, or any part thereof, may be paid to the person aggrieved.

72. *On Excise officers for delay in reporting arrest, &c., or in carrying person arrested to Magistrate.*—Any Excise officer who neglects to report the particulars of an arrest, seizure, or search within twenty-four hours thereafter, or delays carrying to the Magistrate or Collector, as the case may be, any person arrested, or any illicit articles seized under this Act, shall for every such offence be punished with fine not exceeding two hundred rupees.

73. *For conniving at escape of persons arrested, &c.*—Any Excise officer unlawfully releasing or conniving at the escape of any person arrested under this Act, or conniving at the manufacture of spirits or the sale of spirituous or fermented liquors or intoxicating drugs by any unlicensed person, or by any licensed person, contrary to the terms of the license, or acting in a manner inconsistent with his duty, for the purpose of enabling any person to do anything whereby any of the provisions of this Act may be evaded or broken, or the Excise revenue defrauded; and any officer invested with local jurisdiction, authorizing or conniving at the establishment of any unlicensed shop for the sale of such liquors or drugs as aforesaid in any place subject to his control, shall for every such offence be punished with fine not exceeding five hundred rupees.

74. *Adjudication of penalties and seizures.*—All fines leviable for offences against this Act, and all seizures of goods liable to confiscation under this Act, shall be adjudged by the Magistrate on the information of the Collector or any Excise officer: Provided that no such information shall be necessary in any case of complaint preferred to a Magistrate under Section 59, 69, 70, 71, 72, or 73.

75. *Procedure in cases other than those of persons sent in custody by a Collector or Excise officer.*—In all cases in which complaint or information is preferred to a Magistrate of offences committed against this Act, not being cases in which persons are sent in custody by a Collector or Excise officer, the Magistrate shall issue a summons requiring the attendance of the person accused. The rules contained in the Code of Criminal Procedure, for the trial of cases before a Magistrate and for appeal against orders passed by a Magistrate shall apply to trials under this Act. Provided that no complaint or information of an offence against this Act shall be admitted, unless it be preferred within six months after the commission of the offence to which the complaint or information refers.

76. *Punishment on second or subsequent conviction.*—Whenever any person is convicted of an offence against this Act, after having been previously convicted of a like offence, he shall be liable, in addition to the penalty provided for such offence, to imprisonment for a term not exceeding six months. A like punishment of imprisonment not exceeding six months shall be incurred, in addition

to the punishment which may be inflicted for a first offence, upon every subsequent conviction after the second.

77. *Confinement in civil jail.*—Every person imprisoned for an offence under Section 59, 69, 70, 71, 72, or 73, shall be confined in the criminal jail, and every person imprisoned for an offence under any other section shall be confined in the civil jail.

78. *Disposal of confiscated goods.*—All things confiscated under this Act, except opium, shall be disposed of by the Collector by public sale. Opium so confiscated shall be sent for examination to the Civil Surgeon of the station, and if declared by him to be fit for use, shall be sent to the Government factories, or otherwise disposed of in such manner as the Chief Revenue Authority directs. If declared to be unfit for use, it shall be immediately destroyed.

79. *Disposal of fines, &c., as rewards.*—One-half of all fines levied from persons convicted of the unlawful manufacture of spirits, or of the unlawful sale or possession of spirituous or fermented liquors or intoxicating drugs, and one-half of the proceeds from sale of all confiscated articles except opium, and in the case of opium confiscated and declared by the Civil Surgeon to be fit for use, a reward of one rupee eight annas for each ser, shall, upon adjudication of the case, be awarded to the officer or officers who apprehended the offender. The other half of such fines and forfeitures, and the other half of the proceeds of sale, or in the case of opium as aforesaid, a reward of one rupee eight annas for each ser, shall be given to the informer. If in any case the fine or forfeiture is not realized, the Chief Revenue Authority may grant such reasonable reward, not exceeding two hundred rupees, as may seem fit; and such Authority may direct by general order what classes of Excise officers shall receive rewards, and what classes shall have no title to share therein.

80. *Fines undisposed of to belong to Government.*—All fines levied under this Act, the disposal of which is not specially provided for, shall belong to Government. But the Chief Revenue Authority may appropriate any portion thereof, not exceeding one-half, for rewarding informers, or for compensating persons subjected to annoyance or injury by any proceedings under this Act.

#### IX.—*Military Cantonments.*

81. *Rules respecting manufacture and sale of spirits, &c., in Military Cantonments.*—Within the limits of any Military Cantonment, and within such distance from those limits as the Local Government in any case prescribes, no licenses for the manufacture of spirits, or for the sale of spirituous and fermented liquors, shall be granted, nor shall the duties leviable upon such spirits and liquors be let in farm, unless with the knowledge and consent of the Commanding Officer; and upon his requisition any license which has been granted, either by the Collector or by a farmer, within such distance or limits shall be immediately withdrawn.

82. *Mode of making arrest or search within Military Cantonments.*—In all other respects the foregoing provisions of this Act shall have effect within such limits or distance: Provided that, when arrest or search is to be made within the limits of any Cantonment, the Collector or other officer authorized under this Act to make arrest or search shall, whenever it may be practicable, give previous notice to the Commanding Officer, and in all other cases shall report the arrest or search to such Commanding Officer with as little delay as possible. Provided also that nothing herein contained shall affect the provisions of Act No. xxii. of 1864 (*to make provision for the Administration of Military Cantonments*).

#### X.—*Miscellaneous.*

83. *Drawback on exportation.*—A drawback of the duty levied under Part iv. of this Act on spirits manufactured after the English method, and exported by sea to Aden or any port not situate in British India, shall be allowed by the



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Collector of Customs at the port of exportation : Provided that the exportation be made within one year from the date of payment of duty under this Act, and that the spirits, when brought to the Custom House, be accompanied by the pass in which such payment is certified. The amount of drawback to be allowed upon spirits for which duty has been paid shall be regulated according to the strength and quantity of the said spirits, as ascertained by such proof and gauge. The quantity of spirits, for which credit is to be given in the settlement of any bond, shall be determined in the same manner.

84. *No drawback on spirits exported to British Indian ports or shipped as stores.*—No drawback shall be allowed on spirits exported to any port in British India except Aden, or on spirits shipped as stores.

85. *Recovery of sums due under bond.*—Any sum remaining due to Government upon the settlement of a bond executed according to the provisions of this Act, may be recovered by any process for the time being in force for the recovery of arrears of revenue due from farmers of land or their sureties, or by suit on the bond in any Court of competent jurisdiction.

86. *Appeals from orders and sentences under this Act.*—All orders passed by a Collector under this Act shall be appealable to the Commissioner in the usual manner under the rules in force relative to appeals from the orders of Collectors.

87. *Powers vested in officers of Opium Department.*—In the districts in which the poppy is cultivated on account of Government, the Deputy Opium Agents and Sub-Deputy Agents shall exercise the powers conferred by this Act on Collectors, so far as the same relate to the suppression of illegal dealings in opium ; and the officers of the Opium Department shall exercise the powers conferred by this Act on Excise officers for the seizure of illicit opium and the arrest of persons found in possession thereof ; and in respect to such seizures and arrests, shall be deemed to be Excise officers within the meaning of this Act.

88. *Legalization of levy of Excise duties in Oudh.*—All duties heretofore levied in Oudh on spirituous and fermented liquors or intoxicating drugs, shall be deemed to have been levied in accordance with law. All officers and other persons are hereby indemnified for anything done before the passing of this Act which might lawfully have been done if this Act had been in force ; and no suit or other proceeding shall be maintained against any such officer or other person in respect of anything so done.

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### ACT No. I. OF 1872.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 15th March 1872).

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#### *The Indian Evidence Act, 1872.*

*Preamble.*—Whereas it is expedient to consolidate, define, and amend the Law of Evidence ; It is hereby enacted as follows :—

#### PART I.—RELEVANCY OF FACTS.

##### CHAPTER I.—*Preliminary.*

1. *Short title.*—This Act may be called “The Indian Evidence Act, 1872.” It extends to the whole of British India, and applies to all judicial proceedings in or before any Court, including Courts Martial, but not to affidavits presented to any Court or Officer, nor to proceedings before an arbitrator ; and it shall come into force on the first day of September 1872.

2. *Repeal of Enactments.*—On and from that day the following laws shall be repealed :—(1.) All rules of evidence not contained in any Statute, Act, or

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Regulation in force in any part of British India. (2.) All such rules, laws, and regulations as have acquired the force of law under the twenty-fifth section of "The Indian Councils' Act, 1861," in so far as they relate to any matter herein provided for; and (3.) The enactments mentioned in the schedule hereto, to the extent specified in the third column of the said schedule. But nothing herein contained shall be deemed to affect any provision of any Statute, Act, or Regulation in force in any part of British India and not hereby expressly repealed.

3. *Interpretation-clause.*—In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :—"Court" includes all Judges and Magistrates and all persons, except arbitrators, legally authorized to take evidence. "Fact" means and includes (1) any thing, state of things, or relation of things, capable of being perceived by the senses; (2) any mental condition of which any person is conscious.

### *Illustrations.*

- (a) That there are certain objects arranged in a certain order, in a certain place, is a fact.
- (b) That a man heard or saw something is a fact.
- (c) That a man said certain words is a fact.
- (d) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.
- (e) That a man has a certain reputation is a fact.

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts. The expression "Facts in issue" means and includes any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows. *Explanation:* Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue, is a fact in issue.

### *Illustrations.*

A is accused of the murder of B.

At his trial the following facts may be in issue :—

That A caused B's death;

That A intended to cause B's death;

That A had received grave and sudden provocation from B;

That A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

"Document" means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

### *Illustrations.*

A writing is a document:

Words printed, lithographed, or photographed, are documents:

A map or plan is a document:

An inscription on a metal plate or stone is a document:

A caricature is a document:

"Evidence" means and includes—

(1) All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence: (2) all documents produced for the inspection of the Court; such documents are called documentary evidence. A

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fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said not to be proved when it is neither proved nor disproved.

4. "*May presume.*"—Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it: Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved: When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

### II.—Of the Relevancy of Facts.

5. *Evidence may be given of facts in issue and relevant facts.*—Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others. *Explanation:* This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

#### *Illustrations.*

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue—

A's beating B with the club;

A's causing B's death by such beating;

A's intention to cause B's death.

(b) A suitor does not bring with him, and have in readiness for production at the first hearing of the case a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

6. *Relevancy of facts forming part of same transaction.*—Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

#### *Illustrations.*

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d) The question is, whether certain goods ordered from B were delivered to

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A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

7. *Facts which are occasion, cause, or effect of facts in issue.*—Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

### *Illustrations.*

(a) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

(b) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

8. *Motive, preparation, and previous or subsequent conduct.*—Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto. *Explanation 1.*—The word “conduct” in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act. *Explanation 2.*—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

### *Illustrations.*

(a) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d) The question is, whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate; that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(e) A is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

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(f) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence—"the police are coming to look for the man who robbed B," and that immediately afterwards A ran away, are relevant.

(g) The question is, whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—"I advise you not to trust A, for he owes B 10,000 rupees," and that A went away without making any answer, are relevant facts.

(h) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j) The question is whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant as a dying declaration under Section 32, clause (1), or as corroborative evidence under Section 157.

(k) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed, without making any complaint, is not relevant as conduct under this section, though it may be relevant as a dying declaration under Section 32, clause (1), or as corroborative evidence under Section 157.

9. *Facts necessary to explain or introduce relevant facts.*—Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

### *Illustrations.*

(a) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under Section 8, as conduct subsequent to and affected by facts in issue.

## EVIDENCE.

The fact that, at the time when he left home he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

- (d) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A—"I am leaving you because B has made me a better offer." This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.
- (e) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it—"A says you are to hide this." B's statement is relevant as explanatory of a fact which is part of the transaction.
- (f) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

10. *Things said or done by conspirator in reference to common design.*—Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done, or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

### *Illustration.*

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

11. *When facts not otherwise relevant become relevant.*—Facts not otherwise relevant are relevant—

(1) If they are inconsistent with any fact in issue or relevant fact; (2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

### *Illustrations.*

(a) The question is, whether A committed a crime at Calcutta on a certain day. The fact that, on that day, A was at Lahore, is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C, or D, is relevant.

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12. *In suits for damages, facts tending to enable Court to determine amount are relevant.*—In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

13. *Facts relevant when right or custom is in question.*—Where the question is as to the existence of any right or custom, the following facts are relevant :—  
(a) Any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence ; (b) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted, or departed from.

### *Illustration.*

The question is, whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

14. *Facts showing existence of state of mind, or of body or bodily feeling.*—Facts showing the existence of any state of mind—such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling—are relevant, when the existence of any such state of mind or body or bodily feeling, is in issue or relevant.

*Explanation.*—A fact relevant as showing the existence of a relevant state of mind must show that it exists, not generally, but in reference to the particular matter in question.

### *Illustrations.*

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(b) A is accused of fraudulently delivering to another person a piece of counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin, is relevant.

(c) A sues B for damage done by a dog of B's, which B knew to be ferocious. The facts that the dog had previously bitten X, Y, and Z, and that they had made complaints to B, are relevant.

(d) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person.

(e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

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(f) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(g) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(h) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(i) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(j) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(k) The question is, whether A has been guilty of cruelty towards B, his wife. Expressions of their feeling towards each other shortly before or after the alleged cruelty, are relevant facts.

(l) The question is, whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms, are relevant facts.

(m) The question is, what was the state of A's health at the time when an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question, are relevant facts.

(n) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage, is relevant.

The fact that B was habitually negligent about the carriages which he let to hire, is irrelevant.

(o) A is tried for the murder of B by intentionally shooting him dead.

The fact that A, on other occasions, shot at B is relevant, as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them, is irrelevant.

(p) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime, is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class, is irrelevant.

15. *Facts bearing on question whether act was accidental or intentional.*—When



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there is a question whether an act was accidental or intentional, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

### *Illustrations.*

- (a) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

- (b) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

- (c) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D, and E are relevant, as showing that the delivery to B was not accidental.

16. *Existence of course of business when relevant.*—When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

### *Illustrations.*

- (a) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

- (b) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

### *Admissions.*

17. *Admission defined.*—An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

18. *Admission by party to proceeding or his agent.*—Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions. Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character. Statements made by—(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or (2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit, are admissions, if they are made during the continuance of the interest of the persons making the statements.

19. *Admissions by persons whose position must be proved as against party to suit.*—Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a

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suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

### *Illustration.*

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

20. *Admissions by persons expressly referred to by party to suit.*—Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

### *Illustration.*

The question is, whether a horse sold by A to B is sound.

A says to B—"Go and ask C, C knows all about it." C's statement is an admission.

21. *Proof of admissions against persons making them, and by or on their behalf.*—Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:—(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under Section 32. (2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable. (3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

### *Illustrations.*

(a) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b) A, the Captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under Section 32, clause (2).

(c) A is accused of a crime committed by him at Calcutta. He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because if A were dead, it would be admissible under Section 32, clause (2).

(d) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

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He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

22. *When oral admissions as to contents of documents are relevant.*—Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

23. *Admissions in civil cases, when relevant.*—In civil cases no admission is relevant if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

*Explanation.*—Nothing in this section shall be taken to exempt any barrister, pleader, attorney, or vakil from giving evidence of any matter of which he may be compelled to give evidence under Section 126.

24. *Confession caused by inducement, threat, or promise, when irrelevant in criminal proceeding.*—A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat, or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

25. *Confession to Police-officer not to be proved.*—No confession made to a Police-officer shall be proved as against a person accused of any offence.

26. *Confession by accused while in custody of Police not to be proved against him.*—No confession made by any person whilst he is in the custody of a Police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

27. *How much of information received from accused may be proved.*—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a Police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

*Note.*—Under this section those statements only which lead immediately to the production or finding of property, are admissible. Whatever be the nature of the fact discovered, that fact must, in all cases, be itself relevant to the case, and the connection between it and the statements made must have been such that that statement constituted the information through which the discovery was made, in order to render the statement admissible. Other statements connected with the one thus made evidence, and thus mediately, but not necessarily or directly, connected with the fact discovered, are not admissible. That a witness says a plan was prepared in his presence is not a sufficient reason for admitting the plan in evidence, unless the witness also says to his own knowledge the plan is correct.—*R. v. Jora Hasji*, 11 Bom. H.C.R. 242.

28. *Confession made after removal of impression caused by inducement, threat or promise, relevant.*—If such a confession as is referred to in Section 24 is made after the impression caused by any such inducement, threat or promise, has, in the opinion of the Court, been fully removed, it is relevant.

29. *Confession otherwise relevant not to become irrelevant because of promise of secrecy, &c.*—If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions

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which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

30. *Consideration of proved confession affecting person making it and others jointly under trial for same offence.*—When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

### *Illustrations.*

(a) A and B are jointly tried for the murder of C. It is proved that A said,—"B and I murdered C." The Court may consider the effect of this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said,—"A and I murdered C."

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

31. *Admissions not conclusive proof, but may estop.*—Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

### *Statements by Persons who cannot be called as Witnesses.*

32. *Cases in which statement of relevant fact by person who is dead or cannot be found, &c., is relevant.*—Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. (2) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities, or property of any kind; or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him. (3) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages. (4) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom, or matter had arisen. (5) When the statement relates to the existence of any relationship by blood, marriage, or adoption, between persons as to whose relationship the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised. (6) When the statement relates to the existence of any relationship between persons deceased, and is made in any will or deed relating to the affairs of the family to which any

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such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised. (7) When the statement is contained in any deed, will, or other document which relates to any such transaction as is mentioned in Section 13, clause (a). (8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

### *Illustrations.*

- (a) The question is, whether A was murdered by B; or  
A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B; or  
The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.  
Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.
- (b) The question is as to the date of A's birth.  
An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother and delivered her of a son, is a relevant fact.
- (c) The question is, whether A was in Calcutta on a given day.  
A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.
- (d) The question is, whether a ship sailed from Bombay harbour on a given day.  
A letter written by a deceased member of a merchant's firm, by which she was chartered, to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.
- (e) The question is, whether rent was paid to A for certain land.  
A letter from A's deceased agent to A, saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.
- (f) The question is, whether A and B were legally married.  
The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.
- (g) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day, is relevant.
- (h) The question is, what was the cause of the wreck of a ship.  
A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.
- (i) The question is, whether a given road is a public way.  
A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.
- (j) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.
- (k) The question is, whether A, who is dead, was the father of B.  
A statement by A that B was his son, is a relevant fact.
- (l) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m) The question is, whether, and when, A and B were married.

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(n) A sues B for a libel expressed in a painted caricature exposed in a shop-window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

**33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.**—Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable. Provided—that the proceeding was between the same parties or their representatives in interest; that the adverse party in the first proceeding had the right and opportunity to cross-examine; that the questions in issue were substantially the same in the first as in the second proceeding.

*Explanation.*—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

*Statements made under special circumstances.*

**34. Entries in books of account when relevant.**—Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

*Illustration.*

A sues B for Rs. 1000 and shows entries in his account-books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

**35. Relevancy of entry in public record made in performance of duty.**—An entry in any public or other official book, register, or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

**36. Relevancy of statements in maps, charts, and plans.**—Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts, or plans, are themselves relevant facts.

**37. Relevancy of statement as to fact of public nature contained in certain Acts or notifications.**—When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor-General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the *Gazette of India*, or in the *Gazette* of any Local Government, or in any printed paper purporting to be the *London Gazette* or the *Government Gazette* of any colony or possession of the Queen, is a relevant fact.

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38. *Relevancy of statements as to any law contained in law-books.*—When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

*How much of a Statement is to be proved.*

39. *What evidence to be given when statement forms part of a conversation, document, book, or series of letters or papers.*—When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book, or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

*Judgments of Courts of Justice, when relevant.*

40. *Previous judgments relevant to bar a second suit or trial.*—The existence of any judgment, order, or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

41. *Relevancy of certain judgments in probate, &c., jurisdiction.*—A final judgment, order, or decree of a competent Court, in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant. Such judgment, order, or decree is conclusive proof that any legal character which it confers accrued at the time when such judgment, order, or decree came into operation; that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order, or decree declares it to have accrued to that person; that any legal character which it takes away from any such person ceased at the time from which such judgment, order, or decree declared that it had ceased or should cease; and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order, or decree declares that it had been or should be his property.

42. *Relevancy and effect of judgments, orders, or decrees, other than those mentioned in Section 41.*—Judgments, orders, or decrees, other than those mentioned in Section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders, or decrees are not conclusive proof of that which they state.

*Illustration.*

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

43. *Judgments, &c., other than those mentioned in Sections 40-42, when relevant.*

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—Judgments, orders, or decrees, other than those mentioned in Sections 40, 41, and 42, are irrelevant, unless the existence of such judgment, order, or decree, is a fact in issue, or is relevant under some other provision of this Act.

### *Illustrations.*

- (a) A and B separately sue C for a libel which reflects upon each of them. C in each case says, that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

- (b) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

- (c) A prosecutes B for stealing a cow from him. B is convicted.

A, afterwards, sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

- (d) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

44. *Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.*—Any party to a suit or other proceeding may show that any judgment, order, or decree which is relevant under Section 40, 41, or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

### *Opinions of third Persons, when relevant.*

45. *Opinions of experts.*—When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, are relevant facts. Such persons are called experts.

### *Illustrations.*

- (a) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

- (b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts on the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

- (c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

46. *Facts bearing upon opinions of experts.*—Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.



## EVIDENCE.

### *Illustrations.*

(a) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

47. *Opinion as to handwriting, when relevant.*—When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

*Explanation.*—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

### *Illustration.*

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C, and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C, nor D ever saw A write.

48. *Opinion as to existence of right or custom, when relevant.*—When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

*Explanation.*—The expression "general custom or right" includes customs or rights common to any considerable class of persons.

### *Illustration.*

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

49. *Opinions as to usages, tenets, &c., when relevant.*—When the Court has to form an opinion as to the usages and tenets of any body of men or family, the constitution and government of any religious or charitable foundation, or the meaning of words or terms used in particular districts or by particular classes of people, the opinions of persons having special means of knowledge thereon, are relevant facts.

50. *Opinion on relationship, when relevant.*—When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under Section 494, 495, 497, or 498 of the Indian Penal Code.

## EVIDENCE.

### *Illustrations.*

(a) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

51. *Grounds of opinion, when relevant.*—Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

### *Illustration.*

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

### *Character when Relevant.*

52. *In civil cases character to prove conduct imputed, irrelevant.*—In civil cases, the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant.

53. *In criminal cases, previous good character relevant.*—In criminal proceedings, the fact that the person accused is of a good character, is relevant.

54. *In criminal proceedings previous conviction relevant, but not previous bad character, except in reply.*—In criminal proceedings, the fact that the accused person has been previously convicted of any offence is relevant; but the fact that he has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

*Explanation.*—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

55. *Character as affecting damages.*—In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

*Explanation.*—In Sections 52, 53, 54, and 55, the word “character” includes both reputation and disposition; but evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

## PART II.—ON PROOF.

### III.—*Facts which need not be proved.*

56. *Fact judicially noticeable need not be proved.*—No fact of which the Court will take judicial notice need be proved.

57. *Facts of which Court must take judicial notice.*—The Court shall take judicial notice of the following facts:—(1) All laws or rules having the force of law now or heretofore in force, or hereafter to be in force, in any part of British India; (2) All public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed; (3) Articles of War for Her Majesty's Army or Navy; (4) The course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils' Act, or any other law for the time being relating thereto. *Explanation.*—The word “Parliament,” in clauses (2) and (4), includes—1. The Parliament of the United Kingdom of Great Britain and Ireland; 2. The Parliament of Great Britain; 3. The Parliament of England; 4. The Parliament of Scotland; and 5. The Parlia-

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ment of Ireland : (5) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland : (6) All seals of which English Courts take judicial notice : the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor-General or any Local Government in Council : the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India : (7) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the *Gazette of India* or in the official *Gazette* of any Local Government : (8) The existence, title, and national flag of every State or Sovereign recognized by the British Crown : (9) The divisions of time, the geographical divisions of the world, and public festivals, fasts, and holidays notified in the official *Gazette* : (10) The territories under the dominion of the British Crown : (11) The commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons : (12) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attornies, proctors, vakils, pleaders, and other persons authorized by law to appear or act before it : (13) The rule of the road, on land or at sea. In all these cases, and also on all matters of public history, literature, science, or art, the Court may resort for its aid to appropriate books or documents of reference. If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

58. *Facts admitted need not be proved.*—No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings : Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

### IV.—Of Oral Evidence.

59. *Proof of facts by oral evidence.*—All facts, except the contents of documents, may be proved by oral evidence.

60. *Oral evidence must be direct.*—Oral evidence must, in all cases whatever, be direct ; That is to say—if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it ; if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it ; if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner ; if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds : Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable : Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

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### V.—Of documentary Evidence.

61. *Proof of contents of documents.*—The contents of documents may be proved either by primary or by secondary evidence.

62. *Primary evidence.*—Primary evidence means the document itself produced for the inspection of the Court. *Explanation 1.*—Where a document is executed in several parts, each part is primary evidence of the document: Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it. *Explanation 2.*—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

#### *Illustration.*

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

63. *Secondary evidence.*—Secondary evidence means and includes—(1) Certified copies given under the provisions hereinafter contained; (2) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies; (3) Copies made from or compared with the original; (4) Counterparts of documents as against the parties who did not execute them; (5) Oral accounts of the contents of a document given by some person who has himself seen it.

#### *Illustrations.*

- (a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.
- (b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.
- (c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.
- (d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

64. *Proof of documents by primary evidence.*—Documents must be proved by primary evidence except in the cases hereinafter mentioned.

65. *Cases in which secondary evidence relating to documents may be given.*—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—(a) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in Section 66, such person does not produce it; (b) When the existence, condition, or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest; (c) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason

not arising from his own default or neglect, produce it in reasonable time; (d) When the original is of such a nature as not to be easily moveable; (e) When the original is a public document within the meaning of Section 74; (f) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence; (g) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection. In cases (a), (c), and (d), any secondary evidence of the contents of the document is admissible. In case (b), the written admission is admissible. In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible. In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

66. *Rules as to notice to produce.*—Secondary evidence of the contents of the documents referred to in Section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case: Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—(1) When the document to be proved is itself a notice; (2) When, from the nature of the case, the adverse party must know that he will be required to produce it; (3) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force; (4) When the adverse party or his agent has the original in Court; (5) When the adverse party or his agent has admitted the loss of the document; (6) When the person in possession of the document is out of reach of, or not subject to, the process of the Court.

67. *Proof of signature and handwriting of person alleged to have signed or written document produced.*—If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

68. *Proof of execution of document required by law to be attested.*—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court, and capable of giving evidence.

69. *Proof where no attesting witness found.*—If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

70. *Admission of execution by party to attested document.*—The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

71. *Proof when attesting witness denies the execution.*—If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

72. *Proof of document not required by law to be attested.*—An attested document not required by law to be attested, may be proved as if it was unattested.

73. *Comparison of signature, writing, or seal with others admitted or proved.*—In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or

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made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose. The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

### *Public Documents.*

74. *Public documents.*—The following documents are public documents :—  
1. Documents forming the acts, or records of the acts—(i) of the sovereign authority, (ii) of official bodies and tribunals, and (iii) of public officers, legislative, judicial, and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country. 2. Public records kept in British India of private documents.

75. *Private documents.*—All other documents are private.

76. *Certified copies of public documents.*—Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

*Explanation.*—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

77. *Proof of documents by production of certified copies.*—Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

78. *Proof of other official documents.*—The following public documents may be proved as follows :—(1) Acts, orders, or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government, by the records of the departments, certified by the heads of those departments respectively, or by any document purporting to be printed by order of any such Government : (2) The proceedings of the Legislatures, by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government : (3) Proclamations, orders, or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government, by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer : (4) The acts of the Executive or the proceedings of the legislature of a foreign country, by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor-General of India in Council : (5) The proceedings of a municipal body in British India, by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body : (6) Public documents of any other class in a foreign country, by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

### *Presumptions as to Documents.*

79. *Presumption as to genuineness of certified copies.*—The Court shall presume every document purporting to be a certificate, certified copy, or other document

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which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor-General in Council, to be genuine: Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf. The Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such paper.

80. *Presumption as to documents produced as record of evidence.*—Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding on or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

81. *Presumption as to Gazettes, newspapers, private Acts of Parliament, and other documents.*—The Court shall presume the genuineness of every document purporting to be the *London Gazette*, or the *Gazette of India*, or the Government Gazette of any Local Government, or of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

82. *Presumption as to document admissible in England without proof of seal or signature.*—When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of justice in England or Ireland, without proof of the seal, or stamp, or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp, or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims, and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

83. *Presumption as to maps or plans made by authority of Government.*—The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

84. *Presumption as to collections of laws and reports of decisions.*—The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country.

85. *Presumption as to powers-of-attorney.*—The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty or of the Government of India, was so executed and authenticated.

86. *Presumption as to certified copies of foreign judicial records.*—The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government

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of India resident in such country to be the manner commonly in use in that country for the certification of copies of judicial records.

87. *Presumption as to books, maps, and charts.*—The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

88. *Presumption as to telegraphic messages.*—The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

89. *Presumption as to due execution, &c., of documents not produced.*—The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped, and executed in the manner required by law.

90. *Presumption as to documents thirty years old.*—Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested. *Explanation.*—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable. This explanation applies also to Section 81.

### *Illustrations.*

- (a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.
- (b) A produces deeds relating to landed property of which he is the mortgagee. The mortgager is in possession. The custody is proper.
- (c) A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody is proper.

### VI.—Of the Exclusion of Oral by Documentary Evidence.

91. *Evidence of terms of contracts, grants, and other dispositions of property reduced to form of document.*—When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant, or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained. *Exception 1.*—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved. *Exception 2.*—Wills admitted to probate in British India may be proved by the probate. *Explanation 1.*—This section applies equally to cases in which the contracts, grants, or dispositions of property referred to are contained in one document, and to



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cases in which they are contained in more documents than one. *Explanation* 2.—Where there are more originals than one, one original only need be proved. *Explanation* 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

### *Illustrations.*

- (a) If a contract be contained in several letters, all the letters in which it is contained must be proved.
- (b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.
- (c) If a bill of exchange is drawn in a set of three, one only need be proved.
- (d) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

- (e) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

92. *Exclusion of evidence of oral agreement.*—When the terms of any such contract, grant, or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms: *Proviso* (1).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law. *Proviso* (2).—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document. *Proviso* (3).—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant, or disposition of property, may be proved. *Proviso* (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant, or disposition of property, may be proved, except in cases in which such contract, grant, or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents. *Proviso* (5).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract. *Proviso* (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

### *Illustrations.*

- (a) A policy of insurance is effected on goods “in ships from Calcutta to London.” The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy, cannot be proved.
- (b) A agrees absolutely in writing to pay B Rs. 1000 on the first March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March, cannot be proved.

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- (c) An estate called the "Rámpur tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.
- (d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.
- (e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.
- (f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.
- (g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse for Rs. 500." B may prove the verbal warranty.
- (h) A hires lodgings of B, and gives B a card on which is written—"Rooms, Rs. 200 a month." A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.
- (i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.
- (j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

93. *Exclusion of evidence to explain or amend ambiguous document.*—When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

### *Illustrations.*

- (a) A agrees, in writing, to sell a horse to B for "Rs. 1000, or Rs. 1500." Evidence cannot be given to show which price was to be given.
- (b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

94. *Exclusion of evidence against application of document to existing facts.*—When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

### *Illustration.*

A sells to B, by deed, "my estate at Rámpur, containing 100 bighás." A has an estate at Rámpur containing 100 bighás. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

95. *Evidence as to document unmeaning in reference to existing facts.*—When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

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### *Illustration.*

A sells to B, by deed, "my house in Calcutta."

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

96. *Evidence as to application of language which can apply to one only of several persons.*—When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

### *Illustrations.*

(a) A agrees to sell to B, for Rs. 1000, "my white horse." A has two white horses. Evidence may be given of facts which show which of them was meant.

(b) A agrees to accompany B to Haidarabad. Evidence may be given of facts showing whether Haidarabad in the Dekkhan or Haidarabad in Sindh was meant.

97. *Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.*—When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

### *Illustration.*

A agrees to sell to B "my land at X in the occupation of Y." A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

98. *Evidence as to meaning of illegible characters, &c.*—Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local, and provincial expressions, of abbreviations, and of words used in a peculiar sense.

### *Illustration.*

A, a sculptor, agrees to sell to B "all my mods." A has both models and modelling tools. Evidence may be given to show which he meant to sell.

99. *Who may give evidence of agreement varying terms of document.*—Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

### *Illustration.*

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

100. *Saving of provisions of Indian Succession Act relating to wills.*—Nothing in this chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (x. of 1865) as to the construction of wills.

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### PART III.—PRODUCTION AND EFFECT OF EVIDENCE.

#### VII.—Of the Burden of Proof.

101. *Burden of proof.*—Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

##### *Illustrations.*

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

102. *On whom burden of proof lies.*—The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

##### *Illustrations.*

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

103. *Burden of proof as to particular fact.*—The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

##### *Illustration.*

(a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

104. *Burden of proving fact to be proved to make evidence admissible.*—The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

##### *Illustrations.*

(a) A wishes to prove a dying declaration by B. A must prove B's death

(b) A wishes to prove, by secondary evidence, the contents of a document.

A must prove that the document has been lost.

105. *Burden of proving that case of accused* *own exceptions.*—When a

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person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

### *Illustrations.*

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(c) Section 325 of the Indian Penal Code provides that whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under Section 325.

The burden of proving the circumstances bringing the case under Section 335 lies on A.

106. *Burden of proving facts especially within knowledge.*—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

### *Illustrations.*

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

107. *Burden of proving death of person known to have been alive within thirty years.*—When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead, is on the person who affirms it.

108. *Burden of proving that person is alive who has not been heard of for seven years.*—Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

109. *Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.*—When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

110. *Burden of proof as to ownership.*—When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

111. *Proof of good faith in transactions where one party is in relation of active confidence.*—Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

### *Illustrations.*

(a) The good faith of a sale by a client to an attorney is in question in a suit

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brought by the client. The burden of proving the good faith of the transaction is on the attorney.

- (b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

112. *Birth during marriage, conclusive proof of legitimacy.*—The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

113. *Proof of cession of territory.*—A notification in the *Gazette of India* that any portion of British territory has been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

114. *Court may presume existence of certain facts.*—The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

### *Illustrations.*

The Court may presume—

- (a) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession ;
- (b) That an accomplice is unworthy of credit, unless he is corroborated in material particulars ;
- (c) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration ;
- (d) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually ceased to exist, is still in existence ;
- (e) That judicial and official acts have been regularly performed ;
- (f) That the common course of business has been followed in particular cases ;
- (g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it ;
- (h) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him ;
- (i) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it :—

As to illustration (a)—A shopkeeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business :

As to illustration (b)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself :

As to illustration (i)—A crime is committed by several persons. A, B, and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable :

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As to illustration (c)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence :

As to illustration (d)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course :

As to illustration (e)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances :

As to illustration (f)—The question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances :

As to illustration (g)—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family :

As to illustration (h)—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked :

As to illustration (i)—A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

### VIII.—*Estoppel.*

115. *Estoppel.*—When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

#### *Illustration.*

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

116. *Estoppel of tenant, and of licensee of person in possession.*—No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person who came upon any immoveable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

117. *Estoppel of acceptor of bill of exchange, bailee or licensee.*—No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license. *Explanation (1)*—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn. *Explanation (2)*—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

### IX.—*Of Witnesses.*

118. *Who may testify.*—All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put

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to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. *Explanation.*—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

119. *Dumb witnesses.*—A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

120. *Parties to civil suit, and their wives or husbands.* *Husband or wife of person under criminal trial.*—In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

121. *Judges and Magistrates.*—No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

### *Illustrations.*

- (a) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.
- (b) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.
- (c) A is accused before the Court of Session of attempting to murder a Police officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

122. *Communications during marriage.*—No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

123. *Evidence as to affairs of State.*—No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

124. *Official communications.*—No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

125. *Information as to commission of offences.*—No Magistrate or Police officer shall be compelled to say whence he got any information as to the commission of any offence.

126. *Professional communications.*—No barrister, attorney, pleader, or vakil, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for



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the purpose of such employment: Provided that nothing in this section shall protect from disclosure—(1) Any such communication made in furtherance of any illegal purpose; (2) Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment. It is immaterial whether the attention of such barrister, pleader, attorney or vakil was or was not directed to such fact by or on behalf of his client. *Explanation.*—The obligation stated in this section continues after the employment has ceased.

### *Illustrations.*

- (a) A, a client, says to B, an attorney—"I have committed forgery, and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

- (b) A, a client, says to B, an attorney—"I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

- (c) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

127. *Section 126 to apply to interpreters, &c.*—The provisions of Section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakils.

128. *Privilege not waived by volunteering evidence.*—If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in Section 126; and if any party to a suit or proceeding calls any such barrister, pleader, attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

129. *Confidential communications with legal advisers.*—No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

130. *Production of title-deeds of witness not a party.*—No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

131. *Production of documents which another person, having possession, could refuse to produce.*—No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

132. *Witness not excused from answering on ground that answer will criminate.*—A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate,

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or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind : Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

133. *Accomplice.*—An accomplice shall be a competent witness against an accused person ; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

134. *Number of witnesses.*—No particular number of witnesses shall in any case be required for the proof of any fact.

### *X.—Of the Examination of Witnesses.*

135. *Order of production and examination of witnesses.*—The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

136. *Judge to decide as to admissibility of evidence.*—When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant ; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise. If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact and the Court is satisfied with such undertaking: If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

### *Illustrations.*

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under Section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(b) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(c) A is accused of receiving stolen property knowing it to have been stolen. It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C, and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C, or D is proved, or may require proof of B, C, and D before permitting proof of A.

137. *Examination-in-chief.*—The examination of a witness by the party who calls him shall be called his examination-in-chief. The examination of a witness by the adverse party shall be called his cross-examination. The

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examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

138. *Order of examinations. Direction of re-examination.*—Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined. The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief. The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

139. *Cross-examination of person called to produce a document.*—A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

140. *Witnesses to character.*—Witnesses to character may be cross-examined and re-examined.

141. *Leading questions.*—Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.

142. *When they must not be asked.*—Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court. The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

143. *When they may be asked.*—Leading questions may be asked in cross-examination.

144. *Evidence as to matters in writing.*—Any witness may be asked, whilst under examination, whether any contract, grant, or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it. *Explanation.*—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

### *Illustration.*

The question is, whether A assaulted B.

C deposes that he heard A say to D—“B wrote a letter accusing me of theft, and I will be revenged on him.” This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

145. *Cross-examination as to previous statements in writing.*—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

146. *Questions lawful in cross-examination.*—When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend (1) to test his veracity; (2) to discover who he is and what is his position in life, or (3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or in-

directly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

147. *When witness to be compelled to answer.*—If any such question relates to a matter relevant to the suit or proceeding, the provisions of Section 132 shall apply thereto.

148. *Court to decide when question shall be asked and when witness compelled to answer.*—If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations :—(1) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies : (2) Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies : (3) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence : (4) The Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

149. *Question not to be asked without reasonable grounds.*—No such question as is referred to in Section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

*Illustrations.*

- (a) A barrister is instructed by an attorney or vakil that an important witness is a dákáit. This is a reasonable ground for asking the witness whether he is a dákáit.
- (b) A pleader is informed by a person in Court that an important witness is a dákáit. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dákáit.
- (c) A witness, of whom nothing whatever is known, is asked at random whether he is a dákáit. There are here no reasonable grounds for the question.
- (d) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dákáit.

150. *Procedure of Court in case of question being asked without reasonable grounds.*—If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

151. *Indecent and scandalous questions.*—The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

152. *Questions intended to insult or annoy.*—The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

153. *Exclusion of evidence to contradict answers to questions testing veracity.*—

## EVIDENCE.

When a witness has been asked and has answered any question which is relevant to the inquiry, only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely, he may afterwards be charged with giving false evidence. *Exception 1.*—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction. *Exception 2.*—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

### *Illustrations.*

- (a) A claim against an underwriter is resisted on the ground of fraud.  
The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.  
Evidence is offered to show that he did make such a claim.  
The evidence is inadmissible.
- (b) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.  
Evidence is offered to show that he was dismissed for dishonesty.  
The evidence is not admissible.
- (c) A affirms that on a certain day he saw B at Lahore.  
A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

- (d) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

154. *Question by party to his own witness.*—The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

155. *Impeaching credit of witness.*—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:—(1) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit; (2) By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence; (3) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted; (4) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character. *Explanation.*—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

### *Illustrations.*

- (a) A sues B for the price of goods sold and delivered to B.  
C says that he delivered the goods to B.  
Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.  
The evidence is admissible.

## EVIDENCE.

(b) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

156. *Questions tending to corroborate evidence of relevant fact, admissible.*—When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

### *Illustration.*

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

157. *Former statements of witness may be proved to corroborate later testimony as to same fact.*—In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

158. *What matters may be proved in connection with proved statement relevant under Section 32 or 33.*—Whenever any statement, relevant under Section 32 or 33, is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

159. *Refreshing memory.*—A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory. The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct. Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document: Provided the Court be satisfied that there is sufficient reason for the non-production of the original. An expert may refresh his memory by reference to professional treatises.

160. *Testimony to facts stated in document mentioned in Section 159.*—A witness may also testify to facts mentioned in any such document as is mentioned in Section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

### *Illustration.*

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

161. *Right of adverse party as to writing used to refresh memory.*—Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

162. *Production of documents.*—A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court. The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility. If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence : and if the interpreter disobeys such direction, he shall be held to have committed an offence under Section 166 of the Indian Penal Code.

163. *Giving, as evidence, of document called for and produced on notice.*—When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

164. *Using, as evidence, of document production of which was refused on notice.*—When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

*Illustration.*

A sues B on an agreement and gives B notice to produce it. At the trial, A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

165. *Judge's power to put questions or order production.*—The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant ; and may order the production of any document or thing : and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question : Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved : Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131 both inclusive, if the question were asked or the document were called for by the adverse party ; nor shall the Judge ask any question which it would be improper for any other person to ask under Sections 148 or 149 ; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

166. *Power of jury or assessors to put questions.*—In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

XI.—*Of Improper Admission and Rejection of Evidence.*

167. *No new trial for improper admission or rejection of evidence.*—The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

## EXTRADITION.

ACT No. XI. OF 1872.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 25th April 1872.)

AN ACT to provide for the trial of offences committed in places beyond British India and for the Extradition of Criminals.

*Preamble.*—Whereas by treaty, capitulation, agreement, grant, usage, sufferance and other lawful means, the Governor General of India in Council has power and jurisdiction within divers places beyond the limits of British India ; and whereas such power and jurisdiction have from time to time been delegated to Political Agents and others acting under the authority of the Governor General in Council ; and whereas doubts have arisen how far the exercise of such power and jurisdiction, and the delegation thereof, are controlled by and dependent on the laws of British India ; and whereas it is expedient to remove such doubts, and to consolidate and amend the law relating to the exercise and delegation of such power and jurisdiction, and to offences committed by British subjects beyond the limits of British India, and to the extradition of criminals ; It is enacted as follows :—

1. *Short title.*—This Act may be called “The Foreign Jurisdiction and Extradition Act, 1872 :” It extends to the whole of British India ; to all Native Indian subjects of Her Majesty without and beyond the Indian territories under the dominion of Her Majesty ; and to all European British subjects within the dominions of Princes and States in India in alliance with Her Majesty.

2. *Repeal of enactments.*—The enactments mentioned in the first schedule hereto annexed are repealed to the extent specified in the third column thereof.

3. *“Political Agent” defined.*—In this Act the expression “Political Agent” means and includes—(1) the principal officer representing the British Indian Government in any territory or place beyond the limits of British India ; (2) any officer in British India appointed by the Governor General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under this Act for any place not forming part of British India : “Native State” means, in reference to Native Indian subjects of Her Majesty, all places without and beyond the Indian territories under the dominion of Her Majesty ; and in reference to European British subjects, the dominions of Princes and States in India in alliance with Her Majesty.

*Powers of British Officers in Places beyond British India.*

4. *Exercise of powers of Governor General in places beyond British India, and delegation thereof.*—The Governor General in Council may exercise any power or jurisdiction which the Governor General in Council now has, or may at any time hereafter have, within any country or place beyond the limits of British India ; and may delegate the same to any servant of the British Indian Government, in such manner and to such extent as to the Governor General in Council from time to time seems fit.



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5. *Notification of exercise or delegation of such powers.*—A notification in the *Gazette of India* of the exercise by the Governor General in Council of any such power or jurisdiction, and of the delegation thereof by him to any person or class of persons, and of the rules of procedure or other conditions to which such persons are to conform, and of the local area within which their powers are to be exercised, shall be conclusive proof in any Court of the truth of the matters stated in the notification.

6. *Appointment, powers and jurisdiction of Justices of the Peace.*—The Governor General in Council may appoint any European British subject, either by name or by virtue of his office, in any such country or place, to be a Justice of the Peace; and every such Justice of the Peace shall have all the powers conferred on Magistrates of the first class, who are Justices of the Peace and European British subjects, by any law for the time being in force in British India relating to Criminal Procedure. The Governor General in Council may direct to what Court having jurisdiction over European British subjects any such Justice of the Peace is to commit for trial.

7. *Confirmation of existing Political Agents and Justices.*—All Political Agents and all Justices of the Peace, heretofore appointed by the Governor General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, in any such country or place as aforesaid, shall be deemed to be and to have been appointed, and to have and to have had jurisdiction, under the provisions of this Act.

8. *Extension of criminal law of British India to British subjects in Native States.*—The law relating to offences and to Criminal Procedure for the time being in force in British India shall, subject as to procedure to such modifications as the Governor General in Council from time to time directs, extend to all British subjects, European and Native, in Native States.

### *Inquiries, in British India, into Crimes committed by British Subjects in Places beyond British India.*

9. *Liability of British subjects for offences committed in Native States.*—All British subjects, European and Native, in British India may be dealt with, in respect of offences committed by them in any Native State, as if such offences had been committed in any place within British India in which any such subject may be or may be found: Provided that no charge as to any such offence shall be inquired into in British India, unless the Political Agent, if there be such, for the territory in which the offence is said to have been committed, certifies that, in his opinion, the charge is one which ought to be inquired into in British India: Provided also that any proceedings taken against any person under this section, which would be a bar to subsequent proceedings against such person for the same offence, if such offence had been committed in British India, shall be a bar against further proceedings against him under this Act, in respect of the same offence in any Native State.

10. *Power to direct copies of depositions and exhibits to be received in evidence.*—Whenever any such offence as is referred to in Section 9 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a Judicial Officer in the State in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial, in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

### *Extradition.*

11. *Arrest and removal of persons, other than European British subjects, escaping into British India.*—When an offence has been committed, or is supposed to

## EXTRADITION.

have been committed, in any State against the law of such State by a person not being a European British subject, and such person escapes into or is in British India, the Political Agent for such State may issue a warrant for his arrest and delivery at a place in such State, and to a person to be named in the warrant, if such Political Agent thinks that the offence is one which ought to be inquired into in such State, and if the act said to have been done would, if done in British India, have constituted an offence against any of the sections of the Indian Penal Code mentioned in the second schedule hereto, or under any other section of the said Code or any other law which may, from time to time, be specified by the Governor General in Council by a notification in the Gazette.

12. *Direction and execution of warrant.*—Such warrant may be directed to the Magistrate of any district in which the accused person is believed to be ; and shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants ; and the accused person, when arrested, shall be forwarded to the place and delivered to the officer named in the warrant.

13. *Political Agent may himself dispose of case or make over person to ordinary Courts for trial.*—Such Political Agent may either dispose of the case himself, or may give over the person so forwarded, whether he be a Native Indian subject of Her Majesty or not, to be tried by the ordinary Courts of the State in which the offence was committed, if he is generally or specially directed to do so by the Governor General in Council, or by the Governors in Council of the Presidency of Fort St. George or Bombay respectively.

14. *Requisitions for extradition by the executive of any part of British dominions or Foreign power.*—Whenever a requisition is made to the Governor General in Council or any Local Government, by or by the authority of the persons for the time being administering the executive government of any part of the dominions of Her Majesty, or the territory of any Foreign Prince or State, that any person accused of having committed an offence in such dominions or territory should be given up, the Governor General in Council or such Local Government, as the case may be, may issue an order to any Magistrate who would have had jurisdiction to inquire into the offence if it had been committed within his local jurisdiction, directing him to inquire into the truth of such accusation. The Magistrate so directed shall issue a summons or warrant for the arrest of such person, according as the offence named appears to be one for which a summons or warrant would ordinarily issue ; and shall inquire into the truth of such accusation, and shall report thereon to the Government by which he was directed to hold the said inquiry. If, upon receipt of such report, such Government is of opinion that the accused person ought to be given up to the persons making such requisition, it may issue a warrant for the custody and removal of such accused person and for his delivery at a place and to a person to be named in the warrant. The provisions of Section 10 shall apply to inquiries held under this Section. This Section shall not affect the provisions of any law or treaty for the time being in force as to the extradition of offenders ; but the procedure provided by any such law or treaty shall be followed in every case to which it applies.

15. *Power to make rules.*—The Governor General in Council may make, and may from time to time alter, rules to provide for—(1) the confinement, diet, and prison discipline of British subjects, European or Native, imprisoned by Political Agents under this Act ; (2) the removal of accused persons under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant, as entitled to receive them ; (3) and generally to carry out the purposes of this Act.

## EXTRADITION.

### SCHEDULE I.

#### ENACTMENTS REPEALED.

[See Section 2.]

Number and year.	Title.	Extent of repeal.
26 Geo. III., Cap. 57.	An Act for the further Regulation of the trial of Persons accused of certain offences committed in the East Indies; for repealing so much of an Act, made in the twenty-fourth year of the reign of his present Majesty (intituled An Act for the better Regulation and Management of the Affairs of the East India Company, and of the British Possessions in India, and for establishing a Court of Judicature for the more speedy and effectual trial of Persons accused of Offences committed in the East Indies), as requires the Servants of the East India Company to deliver Inventories of their Estates and Effects; for rendering the Laws more effectual against Persons unlawfully resorting to the East Indies; and for the more easy proof, in certain cases, of Deeds and Writings executed in Great Britain or India.	Section twenty-nine.
33 Geo. III., Cap. 52.	An Act for continuing in the East India Company, for a further term, the possession of the British Territories in India, together with their exclusive Trade, under certain limitations; for establishing further Regulations for the government of the said Territories, and the better Administration of Justice within the same; for appropriating to certain uses the Revenues and Profits of the said Company; and for making provision for the good order and government of the Towns of Calcutta, Madras, and Bombay.	Section sixty-seven.
Act I. of 1849.	An Act to provide more effectually for the punishment of offences committed in Foreign States.	So much as is unrepealed.
Act VII. of 1854.	An Act for the apprehension, within the territories under the Government of the East India Company, of persons charged with the commission of heinous offences beyond the limits of the said territories, and for delivering them up to Justice, and to provide for the execution of warrants in places out of the Jurisdiction of the authorities issuing them.	So much as is unrepealed.

### SCHEDULE II.

*Sections of the Indian Penal Code referred to in Section 11.*

Sections 230 to 263, both inclusive; Sections 299 to 304, both inclusive; Sections 307, 310, and 311; Sections 312 to 317, both inclusive; Sections 323 to 333, both inclusive; Sections 347 and 348; Sections 360 to 373, both inclusive; Sections 375 to 377, both inclusive; Sections 378 to 414, both inclusive; Sections 435 to 440, both inclusive; Sections 443 to 446, both inclusive; Sections 464 to 468, both inclusive; Sections 471 to 477, both inclusive.

## CHRISTIAN MARRIAGE.

ACT No. XV. OF 1872.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 18th July 1872.)

AN ACT to consolidate and amend the law relating to the solemnization in India of the marriages of Christians.

*Preamble.*—Whereas it is expedient to consolidate and amend the law relating to the solemnization in India of the marriages of persons professing the Christian religion ; It is hereby enacted as follows :—

### *Preliminary.*

1. *Short title.*—This Act may be called “The Indian Christian Marriage Act, 1872.”

### PART VII.—Penalties.

66. *False oath, notice or certificate for procuring marriage.*—Whoever, for the purpose of procuring any marriage, intentionally makes any false oath or signs any false notice or certificate required by this Act, shall be deemed guilty of the offence described in Section 193 of the Indian Penal Code.

67. *Forbidding, by false personation, issue of certificate by Marriage Registrar.*—Whoever forbids the issue, by a Marriage Registrar, of a certificate, by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such representation to be false, or not having reason to believe it to be true, shall be deemed guilty of the offence described in Section 205 of the Indian Penal Code.

68. *Solemnizing marriage without due authority.*—Whoever, not being authorized under this Act to solemnize a marriage in the absence of a Marriage Registrar of the District in which such marriage is solemnized, knowingly solemnizes a marriage between persons one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years, and not exceeding ten years, or, if the offender be an European or American, with penal servitude according to the provisions of Act No. xxiv. of 1855 (*to substitute penal servitude for the punishment of transportation in respect of European and American convicts, and to amend the law relating to the removal of such convicts*), and shall also be liable to fine.

69. *Solemnizing marriage out of proper time, or without witnesses.*—Whoever knowingly and wilfully solemnizes a marriage between persons, one or both of whom is or are a Christian or Christians, at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses other than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

*Saving of marriages solemnized under special license.*—This section does not apply to marriages solemnized under special licenses granted by the Anglican Bishop of the Diocese or by his Commissary, nor to marriages performed between the hours of seven in the evening and six in the morning by a Clergyman of the Church of Rome, when he has received the general or special license in that behalf mentioned in Section 10.

70. *Solemnizing without notice or within fourteen days after notice, marriage with minor.*—Any Minister of Religion licensed to solemnize marriages under this Act, who, without a notice in writing, or, when one of the parties to the marriage is a minor and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part iii., shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

71. A Marriage Registrar under this Act, who commits any of the following offences:—(1) *issuing certificate, or marrying, without publication of notice*—knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage without publishing the notice of such marriage as directed by this Act; (2) *marrying after expiry of certificate*—after the expiration of two months from the issue by him of a certificate in respect of any marriage, solemnizes such marriage; (3) *solemnizing marriage with minor within fourteen days, without authority of Court, or without sending copy of notice*—solemnizes, without an order of a competent Court authorizing him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the District if there be more Marriage Registrars of the District than one, and if he himself be not the Senior Marriage Registrar; (4) *issuing certificate against authorized prohibition*—issues any certificate the issue of which has been prohibited, as in this Act provided, by any person authorized to prohibit the issue thereof, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

72. *Issuing certificate after expiry of notice, or, in case of minor, within fourteen days after notice.*—Any Marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of three months after the notice has been entered by him as aforesaid, or against authorized prohibition—or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a minor, before the expiration of fourteen days after the entry of such notice, or any certificate the issue of which has been forbidden as aforesaid by any person authorized in this behalf, shall be deemed to have committed an offence under Section 166 of the Indian Penal Code.

73. *Persons authorized to solemnize marriage (other than clergy of Churches of England, Scotland, or Rome).*—Whoever, being authorized under this Act to solemnize a marriage, and not being a Clergyman of the Church of England solemnizing a marriage after due publication of banns, or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf, or, not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, rites, ceremonies, and customs of that church, or, not being a Clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies, and customs of that church, *issuing certificate, or marrying, without publishing notice, or after expiry of certificate*—knowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid, without publishing, or causing to be affixed, the notice of such marriage as directed in Part iii. of this Act, or after the expiration of two months after the certificate has been issued by him; *issuing certificate for, or solemnizing, marriage with minor, within fourteen days after notice*—or knowingly and wilfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending by the post or otherwise, a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the District; *issuing*

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*certificate authorizedly forbidden*—or knowingly and wilfully issues any certificate the issue of which has been forbidden, under this Act, by any person authorized to forbid the issue ; *solemnizing marriage authorizedly forbidden*—or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same, shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine.

74. *Unlicensed person granting certificate pretending to be licensed.*—Whoever, not being licensed to grant a certificate of marriage under Part vi. of this Act, grants such certificate, intending thereby to make it appear that he is licensed, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

75. *Destroying or falsifying register-books.*—Whoever, by himself or another, wilfully destroys or injures any register-book or the counterfoil certificates thereof, or any part thereof, or any authenticated extract therefrom, or falsely makes or counterfeits any part of such register-book or counterfoil certificates, or wilfully inserts any false entry in any such register-book or counterfoil certificate or authenticated extract, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

76. *Limitation of prosecutions under Act.*—The prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed.

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### ACT No. X. OF 1873.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 8th April 1873.)

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AN ACT to consolidate the law relating to Judicial Oaths, and for other purposes.

*Preamble.*—Whereas it is expedient to consolidate the law relating to judicial oaths, affirmations, and declarations, and to repeal the law relating to official oaths, affirmations, and declarations ; It is hereby enacted as follows :—

#### I.—Preliminary.

1. *Short title.*—This Act may be called “The Indian Oaths Act, 1873 :” It extends to the whole of British India, and, so far as regards subjects of her Majesty, to the territories of Native Princes and States in alliance with her Majesty ; And it shall come into force on the first day of May 1873.

2. *Repeal of enactments.*—The enactments specified in the schedule hereto annexed are repealed to the extent mentioned in the third column thereof.

3. *Saving of certain oaths and affirmations.*—Nothing herein contained applies to proceedings before Courts Martial, or to oaths, affirmations, or declarations prescribed by any law which, under the provisions of the Indian Councils’ Act, 1861, the Governor General in Council has not power to repeal.

#### II.—Authority to Administer Oaths and Affirmations.

4. *Authority to administer oaths and affirmations.*—The following Courts and persons are authorized to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law :—

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(a) All Courts and persons having by law or consent of parties authority to receive evidence; (b) The Commanding Officer of any military station occupied by troops in the service of Her Majesty: provided (1) that the oath or affirmation be administered within the limits of the station, and (2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

### III.—Persons by whom Oaths or Affirmations must be made.

5. *Oaths or affirmations to be made by witnesses, interpreters, jurors.*—Oaths or affirmations shall be made by the following persons:—(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence: (b) interpreters of questions put to, and evidence given by, witnesses, and (c) jurors. Nothing herein contained shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

6. *Affirmation by Natives or by persons objecting to oaths.*—Where the witness, interpreter, or juror is a Hindu or Muhammadan, or has an objection to making an oath, he shall, instead of making an oath, make an affirmation. In every other case the witness, interpreter, or juror shall make an oath.

### IV.—Forms of Oaths and Affirmations.

7. *Forms of oaths and affirmations.*—All oaths and affirmations made under Section 5 shall be administered according to such forms as the High Court may from time to time prescribe. And until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use. *Explanation.*—As regards oaths and affirmations administered in the Court of the Recorder of Rangoon and the Court of Small Causes of Rangoon, the Recorder of Rangoon shall be deemed to be the High Court within the meaning of this section.

8. *Power of Court to tender certain oaths.*—If any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

9. *Court may ask party or witness whether he will make oath proposed by opposite party.*—If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in Section 8, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation: Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

10. *Administration of oath if accepted.*—If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a Commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court.

11. *Evidence conclusive as against person offering to be bound.*—The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

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12. *Procedure in case of refusal to make oath.*—If the party or witness refuses to make the oath or solemn affirmation referred to in Section 8, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

### V.—Miscellaneous.

13. *Proceedings and evidence not invalidated by omission of oath or irregularity.*—No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution, or irregularity took place, or shall affect the obligation of a witness to state the truth.

14. *Persons giving evidence bound to state the truth.*—Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.

15. *Amendment of Penal Code, Sections 178 and 181.*—The Indian Penal Code, Sections 178 and 181, shall be construed as if, after the word “oath,” the words “or affirmation” were inserted.

16. *Official oaths abolished.*—Subject to the provisions of Sections 3 and 5, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever.

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## ACT No. IX. OF 1874.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 7th April 1874.)

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### AN ACT to consolidate and amend the Law relating to European Vagrancy.

*Preamble.*—Whereas it is expedient to consolidate and amend the laws relating to persons of European extraction who wander in a destitute condition throughout India ; It is hereby enacted as follows :—

#### PART I.—Preliminary.

1. *Short title.*—This Act may be called “The European Vagrancy Act, 1874 :” It extends to the whole of British India and to the dominions of Princes and States in India in alliance with Her Majesty ; And it shall come into force at once : Provided that Sections 4 to 16 (both inclusive), 19, 20, 24 and 29 shall not come into force in Coorg, or in the Andaman and Nicobar Islands, or in any of the dominions of the Princes and States in India in alliance with Her Majesty not situate within the limits of any Presidency, Lieutenant-Governorship or Chief Commissionership in British India, until such day or respective days as the Governor General in Council from time to time, by notification in the *Gazette of India*, appoints in this behalf.



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2. *Repeal of Acts.*—Acts No. xxi. of 1869 (to provide against European Vagrancy) and No. xxviii. of 1871 (to amend the European Vagrancy Act 1869) are hereby repealed. But all appointments and orders made, work-houses provided, certificates given, powers conferred, rules prescribed, and exemptions granted under the former Act, shall be deemed to have been respectively made, provided, given, conferred, prescribed and granted under this Act.

3. *Interpretation-clause.* “*Person of European extraction.*”—In this Act “*Person of European extraction*” includes—(a) persons born in Europe, America, the West Indies, Australia, Tasmania, New Zealand, Natal, or the Cape Colony; (b) the sons and grandsons of such persons,

but does not include persons commonly called Eurasians or East Indians: “*Vagrant*” means a person of European extraction found asking for alms, or wandering about without any employment or visible means of subsistence: “*Master of a ship*” includes any person in charge of a decked vessel: And in Parts iii. and v. of this Act “*Magistrate*” means, within the limits of the towns of Calcutta, Madras and Bombay, a Magistrate of Police, and, outside those limits, a person exercising powers under the Code of Criminal Procedure not less than those of a Magistrate of the second class.

### PART II.—*Procedure.*

4. *Power to require apparent vagrant to go before Magistrate.*—Any Police officer may within the limits of the towns of Calcutta, Madras and Bombay, require any person who is apparently a vagrant to accompany him or any other Police officer to, and to appear before, the nearest Magistrate of Police, and may, without those limits, require any such person to accompany him or any other Police officer to, and to appear before, the nearest Justice of the Peace exercising the powers of a Magistrate of the first class under the Code of Criminal Procedure.

5. *Summary inquiry into vagrant's circumstances. Declaration of vagrancy.*—The Magistrate of Police or Justice shall in such case, or in any other case where a person apparently a vagrant comes before him, make a summary inquiry into the circumstances and character of the apparent vagrant; and if he is satisfied that such person is a vagrant, he shall record in his office a declaration to that effect. If he is further of opinion that the vagrant is not likely to obtain employment at once, or if he has reason to believe that a declaration of vagrancy has on any former occasion been recorded in respect of such vagrant, he shall require the vagrant to go to a Government work-house, and shall draw up an order to that effect. The vagrant shall then be placed in charge of the Police for the purpose of being forwarded to the work-house, and the said order shall be a sufficient authority to the Police for retaining him in their charge while he is on his way to the work-house, and to the Governor of the work-house for receiving and detaining such vagrant.

6. *Forwarding vagrant to place of employment.*—Where the officer making the inquiry mentioned in Section 5 is of opinion that the vagrant is likely to obtain employment in any place subject to the Local Government, or (when the vagrant is in any part of the dominions mentioned in Section 1) in any place subject to any adjacent Local Government, such officer may in his discretion forward the vagrant to such place in charge of the Police, and draw up an order to that effect. Such order shall be a sufficient authority to the Police for retaining the vagrant in their charge while he is on his way to such place of employment.

7. *Assistance to obtain employment.*—Upon his arrival at the place of employment, the vagrant shall be taken before the nearest Magistrate of Police or Justice of the Peace exercising powers as aforesaid, to whom the order for transmission shall be delivered. Such officer shall thereupon, to the best of his

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ability, assist the vagrant in seeking employment, and may in the meantime, if he think fit, keep the vagrant in the charge of the Police. Should the vagrant fail to obtain suitable employment within a reasonable time not exceeding fifteen days from such arrival, such officer shall forward him to a Government work-house in the manner provided by Section 5.

8. *Subsistence allowance.*—Every person while in charge of the Police, whether before inquiry as to his vagrancy, or while he is on his way, under Section 5, to the work-house, or, under Section 6, to a place of employment, shall be entitled to an allowance for his subsistence at the rate of eight annas per diem. The Magistrate of Police or Justice, before whom any vagrant is taken under Section 7, may, if he think fit, order the vagrant to receive a similar allowance while he is seeking employment. The Local Government shall cause such allowance to be paid out of such funds at its disposal and in such manner as it may from time to time direct.

9. *Power to give certificates.*—Any Magistrate of Police or Justice of the Peace exercising powers as aforesaid may, on being satisfied that any person of European extraction is not likely to become a vagrant, give such person a certificate under his hand stating that for a certain time (mentioning it) not exceeding six months from the date of the certificate, and within certain limits (mentioning them), nothing in Sections 4, 5, 6, and 7 shall apply to the holder of such certificate; and thereupon, so long as the certificate remains in force, nothing in Sections 4, 5, 6, and 7 shall apply to such person within such limits as aforesaid. Every such certificate shall be in the form set forth in the first schedule to this Act annexed, or as near thereto as circumstances will admit.

10. *Power to invest certain officials with jurisdiction of Justices under Sections 5, 7, 8, and 9.*—The Local Government may from time to time, by notification in the official Gazette, invest any Justice of the Peace, District Superintendent of Police, or Assistant District Superintendent of Police with the jurisdiction and powers conferred by this part on a Justice of the Peace exercising powers as aforesaid.

### PART III.—Government Work-houses.

11. *Provision of Government work-houses.*—The Local Government, with the previous sanction of the Governor General in Council, may provide work-houses with their necessary furniture and establishment, at such places as it may think proper, for the temporary reception of vagrants, or may, by writing under the hand of a Secretary to such Government, certify any building, or part of a building not provided as a work-house under the former part of this section, to be fit for a work-house for the purposes of this Act. Every such certificate shall be published in the local official Gazette, and thereupon such building or part of a building shall, until the Local Government otherwise orders, be deemed a Government work-house under this Act. The Local Government shall allow the same scale of diet for the support of vagrants received in such work-houses as is for the time being allowed for Europeans confined in the local prisons or penitentiaries.

12. *Superintendence of work-houses.*—Every such work-house shall be under the immediate charge of a Governor, who shall be appointed, and may be suspended or removed, by the Local Government. Every such Governor shall, if the Local Government think fit, be subject to the orders of a Committee of Management appointed from time to time by such Government, or, in the absence of a Committee, to the orders of such officer as the Local Government from time to time appoints in this behalf.

13. *Search of vagrants.*—Every such Governor may order that any vagrant admitted to the work-house under his charge shall be searched, and that the vagrant's bundles, packages and other effects shall be inspected, and may direct

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that any money then found with or on the vagrant, shall be applied (subject to the orders of the Local Government) towards the expense of carrying this Act into execution, and may order that all or any of the said effects shall be sold, and that the produce of the sale be applied as aforesaid, but subject to like orders.

14. *Discipline.*—Vagrants admitted to work-houses under this Act shall be subject to such rules of management and discipline as may from time to time be prescribed by the Local Government with the previous sanction of the Governor General in Council. The Local Government may authorize any Governor of a work-house to punish (under or not under the supervision and direction of a Committee of Management, as the Local Government thinks fit) any vagrant who knowingly disobeys or neglects any such rule with any one of the following punishments (namely)—(a) solitary confinement within the work-house for any time not exceeding seven days; (b) solitary confinement within the work-house for any time not exceeding three days upon a diet reduced to such extent as the Local Government may prescribe; (c) hard labour for any time not exceeding seven days; (d) reduction of diet to such extent as the Local Government may prescribe for any time not exceeding five days; Or in lieu of any such punishment any such vagrant may, on conviction before a Magistrate of such disobedience or neglect, be punishable with rigorous imprisonment in jail for a term which may extend to three months.

15. *Refusal to accept employment.*—The Governor and the Committee of Management (if any) of every such work-house shall use his and their best endeavours to obtain outside the work-house suitable employment for the vagrants admitted thereto. When such employment is obtained, any such vagrant refusing or neglecting to avail himself thereof, shall, on conviction before a Magistrate, be punishable with rigorous imprisonment for a term which may extend to one month.

### PART IV.—*Removal from India.*

16. *Removal of Vagrants. Cost of Removal.*—If after the lapse of a reasonable time no suitable employment is obtainable for any such vagrant, the Local Government may either (when he has entered into such agreement as herein-after mentioned) cause him to be removed from British India in manner hereinafter provided, the cost of such removal being paid by Government; or it may cause Sections 23 and 30 to be read to him and may then release him.

17. *Agreements with vagrants.*—Any vagrant or other person of European extraction may enter into an agreement in writing with the Secretary of State for India in Council, binding himself—(a) to proceed to such port in British India as shall be mentioned in the agreement; (b) there to embark on board such ship and at such time as is directed by an officer appointed in this behalf by the Local Government of the territories in which such port is situate, for the purpose of being removed from India at the expense of the said Secretary of State in Council; (c) to remain on board such ship until she has arrived at her port of destination; and (d) not to return to India until five years have elapsed from the date of such embarkation. Every such agreement may be on unstamped paper and shall be in the form set forth in the second schedule to this Act annexed, or as near thereto as circumstances admit.

18. *Power to perform agreement.*—The Local Government of the territories in which the said port is situate, may enter into such contracts for conveyance or otherwise, and perform such other acts as may be necessary to carry out such agreement on the part of the said Secretary of State in Council.

### PART V.—*Penalties.*

19. *Refusal to go before Magistrate.*—Any person refusing or failing to accompany a Police officer to, or to appear before, a Magistrate of Police or Justice of

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the Peace, for the purpose of preliminary inquiry, when required so to do under Section 4, may be arrested without warrant and shall be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with imprisonment for a term which may extend to one month, or with fine, or with both. And any person who, when required under Section 4 to accompany a Police officer to, or to appear before, a Magistrate of Police or Justice of the Peace, commits an offence punishable under Section 353 of the Indian Penal Code, may, whether he be or be not an European British Subject, be tried by a Magistrate for such offence.

20. *Escaping from Police.*—Any vagrant who escapes from the Police while committed to their charge under the orders specified in Sections 5 and 6, or who leaves a work-house, under this Act, without permission from the Governor, or who having with such permission left a work-house for a limited time or a specified purpose, fails to return on the expiration of such time or when such purpose has been accomplished or proves to be impracticable, shall for every such offence be punishable, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

21. *Failing to proceed to port of embarkation.*—Any person entering into an agreement under Section 17, and failing to proceed in pursuance thereof to the port therein mentioned, or refusing to embark when directed so to do under the same section, or escaping from the ship in which he has so embarked before she has reached her port of destination, shall for every such offence be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months.

22. *Returning to India.*—Any person returning to India within five years of the date of his embarkation pursuant to any agreement entered into under Section 17, unless specially permitted so to do by the Secretary of State for India, shall for every such offence be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

23. *Begging.*—Any person of European extraction found asking for alms when he has sufficient means of subsistence, or asking for alms in a threatening or insolent manner, or continuing to ask for alms of any person after he has been required to desist, shall be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term not exceeding one month for the first offence, two months for the second, and three months for any subsequent offence.

24. *Procedure on close of imprisonment.*—Every person imprisoned under Section 19, 20, 21, 22, or 23, shall, at the end of his term of imprisonment, be placed before the nearest Magistrate of Police or Justice of the Peace exercising powers as aforesaid, who shall, if he think fit, forthwith deal with him in the manner prescribed by Sections 5 and 6. The order of transmission shall certify the fact of the previous conviction.

25. *Penalty on shipmaster bringing European convicts to India.*—Every master of a ship landing or allowing to land in any part of British India any person of European extraction who has been convicted in any other part of Her Majesty's dominions of felony, or of an offence which, if committed in England, would be felony, shall, on conviction before a Magistrate, be liable, for every such person so landed or allowed to land, to pay a fine not exceeding five hundred rupees and not less than one hundred rupees, and, in default of payment, to imprisonment for any term not exceeding two months, unless the defendant satisfy the Magistrate by evidence (which the defendant is hereby declared competent to give), that he had made due enquiry as to the person so landed, or allowed to land, and that he had no reason to believe that such person had been convicted as aforesaid. The Governor General in Council may from time to time, by notification in the *Gazette of India*, exempt from the operation of the former

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part of this section the masters of any class of ships, on such terms as to the Governor General in Council seem fit, and either in respect of all or of any of the persons on board such ships. The Governor General in Council may in like manner revoke any exemption made under this Section.

26. *Recovery of fines.*—All fines imposed under this Act may be recovered, if for offences committed outside the local limits of the towns of Calcutta, Madras and Bombay, in the manner prescribed by the Code of Criminal Procedure, and if for offences committed within those limits, in the manner prescribed by any Act regulating the Police of such towns in force for the time being. All fines recovered under this Act shall be paid to the credit of the Government of India, or as the Governor General in Council from time to time directs.

27. *Prosecutions.*—All prosecutions under this Act may be instituted and conducted by such officer as the Local Government from time to time appoints in this behalf.

28. *Limits of jurisdiction.*—In imposing penalties under this Part and Part iii. of this Act, no person shall exceed the limits of jurisdiction prescribed for him by the Code of Criminal Procedure in the case of offenders not being European British subjects.

29. *Validity of proceedings where Magistrate is not the nearest.*—No proceeding under this Act shall be deemed invalid by reason only that the Magistrate of Police or Justice, before whom a person, apparently a vagrant, was required to appear, or before whom a person was placed under Section 24, was not the nearest.

### PART VI.—Miscellaneous.

30. *Deprivation of privileges of European British subjects under Criminal Procedure Code.*—Any European British subject who, upon the summary enquiry mentioned in Section 5, has been determined to be a vagrant, or who has been convicted under Section 22 or Section 23, shall, so long as he remains in India, be subject, beyond the limits of the said towns, to the provisions of the Code of Criminal Procedure (other than those contained in Chapter XXXVIII. of the same Code) applicable to an European not being a British subject. If from any cause he is committed or held to bail by a Justice of the Peace to take his trial before a High Court, he shall not be at liberty to object to the jurisdiction of such Justice of the Peace or High Court on the ground of anything contained in the former part of this section. Save as aforesaid nothing herein contained shall be deemed to confer jurisdiction over European British subjects on Magistrates, who, if this Act had not been passed, would have had no such jurisdiction.

31. *Liability of importers of Europeans or employers of soldiers becoming vagrants.*—Whenever any person of European extraction lands in India, or, being a Non-Commissioned Officer or Soldier in Her Majesty's Army, leaves that Army in India, under an engagement to serve any other person, or any Company, Association or body of persons in any capacity, and whenever a sailor of European extraction not being a British subject, is discharged from his ship in any British Indian port, and becomes chargeable to the State as a vagrant within one year after his arrival in India or leaving the Army, or discharge from his ship, as the case may be, then the person, or Company, Association or body, to serve whom he has so landed in India or left the Army, or, in the case of a sailor, the person who is at the date of the discharge the owner or agent of the ship from which the sailor has been so discharged, shall be liable to pay to the Government the cost of his removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant. Such costs and charges shall be recoverable by suit as if an express agreement to repay them had been entered into with the Secretary of State for India in Council, by the person, Company, Association, body, owner or agent chargeable.

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32. *Liability of consignee in case of Europeans who arrive in charge of animals and become vagrants.*—When any person of European extraction lands in India, being or having been during his passage to India, or from one Indian port to another, in charge of, or in attendance upon, any animal, and becomes chargeable to the State as a vagrant within one year after his arrival in India, then the consignee of such animal, or the agents in India for the sale of such animal, or, if such consignee or agents cannot be found, the agent to whom the ship in which such animal arrived in India was consigned, shall be liable to pay to the Government the cost of such person's removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant. Any such consignee or agent shall be entitled to charge the consignor or principal for any payment to the Government under this section. For the purposes of this section "Consignee" includes any person who undertakes to dispose of such animal for the benefit of the consignor, and "Agent" includes any person who undertakes the agency of such ship, though it may not have been consigned to him.

33. *Evidence of declaration under Section 5.*—In any proceeding under this Part, a certified copy of the declaration recorded under Section 5, shall be *prima facie* evidence that the European British subject named therein has been, upon the summary enquiry mentioned in that section, determined to be and that he was at the date of the declaration a vagrant.

34. *Exercise of powers conferred on Local Government.*—The powers and duties conferred and imposed by Sections 16 and 18, on a Local Government, may be exercised and performed by such class of officers as the Local Government from time to time, by notification in the official Gazette, appoints in this behalf.

35. *Exercise in Native States of powers conferred on Magistrates, Justices, and Police.*—The powers and duties conferred and imposed by this Act on Magistrates, Justices of the Peace exercising the powers of a Magistrate of the first class, and Police officers respectively may, in places beyond the limits of British India, be exercised and performed by such persons respectively as the Governor General in Council from time to time, by notification in the *Gazette of India*, appoints in this behalf.

36. *Power to make rules for guidance of officers.*—The Governor General in Council may from time to time make rules, consistent with this Act, for the guidance of officers in matters connected with its enforcement. All such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

### THE FIRST SCHEDULE.

(See Section 9.)

WHEREAS *E. F.* of \_\_\_\_\_ a person of European extraction and holder of this certificate, has appeared before me and satisfied me that he is not likely to become a vagrant within the meaning of the European Vagrancy Act, 1874, THESE ARE TO CERTIFY that for the space of \_\_\_\_\_ months from the date hereof and within the Province [or District] of \_\_\_\_\_ nothing in Sections 4, 5, 6, and 7 of the same Act shall be deemed to apply to him, unless he is found asking for alms, IN WHICH CASE this certificate shall be void.

(Signed) *G. H.*

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_  
 \_\_\_\_\_ Magistrate of Police for the Town of \_\_\_\_\_ or Justice of the Peace  
 for \_\_\_\_\_ exercising the powers of a Magistrate of the \_\_\_\_\_ class.

### THE SECOND SCHEDULE.

(See Section 17.)

ARTICLES OF AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_  
 BETWEEN the Secretary of State for India in Council of the one part and *C. D.*  
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of, &c. [the *vagrants*], of the other part : Each of the parties hereto (so far as relates to the acts on his own part to be performed) hereby agrees with the other of them as follows :—

1. The said *C. D.* shall proceed forthwith to the port of [the port of *embarkation*].

2. The said *C. D.* shall there embark on board such ship and at such time as an officer appointed in this behalf by the Local Government shall direct.

3. The said *C. D.* shall remain on board such ship until she shall have arrived at her port of destination.

4. The said *C. D.* shall not return to India until five years shall have elapsed from the date of such embarkation, unless specially permitted so to return by the said Secretary of State.

5. The said Secretary of State in Council shall defray the cost of the transit of the said *C. D.* to the said port, and of his lodging and subsistence during such transit and during his detention (if any) at the same port, and shall contract with the owner of the said ship, or his agent, for the passage of the said *C. D.* on board the said ship, and for his subsistence during the voyage for which he shall embark as aforesaid.

In witness whereof *A. B.* (by order of the Governor General of India in Council [or the Governor of \_\_\_\_\_ in Council or the Lieutenant-Governor of \_\_\_\_\_, or the Chief Commissioner of \_\_\_\_\_], on behalf of the said Secretary of State in Council), and the said *C. D.* have hereunto set their hands the day and year first above written.

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### ACT No. IV. OF 1875.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 9th February 1875.)

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AN ACT for the further amendment of Act No. i. of 1859, and for other purposes.

*Preamble.*—Whereas Act No. i. of 1859 (for the amendment of the law relating to *Merchant Seamen*), Section 100, provides that, in the cases of loss, abandonment, damage, or casualty therein mentioned, it shall be lawful for the Local Government, if a formal investigation appears to it to be requisite or expedient, to appoint two persons to make the same, and declares that one of such persons shall be a Magistrate acting in or near the place where the investigation is made, and that the other may be any person conversant with maritime affairs: And whereas it is expedient in many cases that such investigations shall be made by persons more in number and of more varied qualifications: And whereas it is also expedient to provide efficient means for enforcing the attendance of witnesses in such investigations and in trials under Act No. xii. of 1859 (to make better provision for the trial of *Pilots at the Presidency of Fort William in Bengal for breach of duty*); And whereas it is expedient to repeal Act No. xv. of 1863 (to amend Act i. of 1859) and to re-enact certain of its provisions with the amendments hereinafter appearing: And whereas it is provided by Act No. x. of 1841, Sections 2, 15, 17, and 23, that the persons guilty of the offences therein respectively mentioned shall be liable upon conviction by information by the Advocate General to the penalties therein respectively provided: And whereas it is expedient to render the said penalties recoverable otherwise than on information by the Advocate General; It is hereby enacted as follows :—

## INDIAN MERCHANT SHIPPING.

### I.—Preliminary.

1. *Short title.*—This Act may be called "The Indian Merchant Shipping Act, 1875;" it extends to the whole of British India; and it shall come into force at once.

2. *Repeal of enactments.*—Sections 100, 101, and 102 of Act i. of 1859 and the whole of Act xv. of 1863, are hereby repealed. But every enquiry now pending, which has been commenced under any enactment so repealed, shall be deemed to have been commenced under this Act.

### II.—Investigations into Losses of Ships and Charges against Masters, Mates, or Engineers.

3. *Notice of accidents to be given to Local Government.*—In any of the cases following (namely):—(a) whenever any ship is lost, abandoned, or materially damaged on or near the coasts of India; (b) whenever any ship causes loss or material damage to any other ship on or near such coasts; (c) whenever by reason of any casualty happening to or on board of any ship on or near such coasts, loss of life ensues; (d) whenever any such loss, abandonment, damage, or casualty happens elsewhere to or on board any ship registered at any port or place in India, under the Merchant Shipping Act, 1854, or under Act x. of 1841; the master, pilot, harbour-master, or other person in charge of the ship, or, in cases under clause (b) of this section, of each ship, at the time of the loss, abandonment, damage, or casualty, or, where any ship above referred to arrives in British India, the person then in charge of her, shall, on arriving in British India, give immediate notice of such loss, abandonment, damage, or casualty to the nearest Magistrate, or, if he arrive at any port, then to such officer as the Local Government appoints in this behalf. Any person bound to give notice under this section, and wilfully failing to give the same, shall be liable to fine not exceeding five hundred rupees and, in default of payment, to simple imprisonment for a term which may extend to three months. The Magistrate or officer receiving such notice shall without delay communicate the same to the Local Government.

4. *Power to appoint special Court of Enquiry.*—If in any such case a formal investigation appears to the Local Government to be requisite or expedient, the Local Government (whether such notice be given or not) may appoint a special Court, consisting of not less than two nor more than four persons, to make such investigation, and may fix the place for making the same. One of such persons shall be a Magistrate acting in or near the place where the investigation is made, another shall be some person conversant with maritime affairs. The other or others (if any) shall be conversant with either maritime or mercantile affairs.

5. *Courts authorized to investigate charges against Masters, &c.*—Every Court having admiralty jurisdiction in India, and the principal Court of ordinary criminal jurisdiction at every port of British India where there is no Court having admiralty jurisdiction, is hereby authorized, at the instance of the Local Government, or of such officer as the Local Government may have empowered in this behalf, to investigate charges of incompetency or misconduct on the part of any Master, Mate, or Engineer of any ship, who holds a certificate granted by the Board of Trade, or as to shipwreck or other casualties affecting ships.

*Assessor.*—Every such Court may, if it think fit, constitute as its assessor for the purposes of the investigation any person conversant with maritime affairs and willing to act as such assessor. Such person shall attend during the investigation and deliver his opinion in writing to be recorded on the proceedings. But the decision of the case shall rest with the Court.

6. *Communication to Court of grounds for charging Master, &c., with incom-*



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*petency, &c.*—If the Local Government has reason to think that there are grounds for charging any Master, Mate, or Engineer holding a certificate granted by the Board of Trade with incompetency or misconduct, it shall transmit a statement of such grounds to the Court making the investigation.

7. *Communication of grounds of charge to certificate-holder.*—If the investigation involves a charge of incompetency or misconduct against any person holding such certificate as aforesaid, the Court shall, if practicable, before commencing the investigation, cause the holder of such certificate to be furnished with a copy of the statement transmitted by the Local Government as aforesaid.

8. *Powers of special Court.*—For the purpose of the investigation the special Court, so far as relates to compelling the attendance and examination of witnesses and the production of documents and the regulation of the proceedings, shall have the same powers as if such investigation were a proceeding relating to an offence or cause of complaint upon which the said Magistrate has power to convict.

9. *Procedure on discovery in course of investigation of grounds for charging with incompetency, &c.*—If, in the course of an investigation under this Act by any of the Courts hereinbefore mentioned, it appears that there are grounds for charging with incompetency or misconduct any holder of such certificate as aforesaid not so charged by the Local Government, the Court may cause a statement of such grounds to be furnished to such holder, and may then commence an investigation into such charge of incompetency or misconduct.

10. *Powers of Court in making investigation.*—For the purpose of such investigation such Court may summon the Master, Mate, or Engineer to appear, and shall give him full opportunity of making a defence, either in person or otherwise, and may summon and examine witnesses.

11. *Report by Court to Local Government.*—The Court shall in all cases transmit to the Local Government a full report of the conclusions at which it has arrived.

12. *Statement of decision in open Court.*—If the Court decide that any such certificate as aforesaid shall be cancelled or suspended, it shall so state in open Court, at the conclusion of the case or as soon afterwards as possible.

13. *Transmission of report and certificate to Board of Trade.*—When the Court decides to cancel or suspend a certificate, it shall send a full report upon the case with the evidence and the the suspended or cancelled certificate through the Local Government to the Board of Trade.

14. *Preliminaries to cancellation or suspension.*—Provided that no certificate shall be cancelled or suspended—(a) unless the person holding the certificate has before the commencement of the investigation been furnished with a copy of the statement of the case upon which the investigation has been ordered; (b) if the Court be a Court of Admiralty or of ordinary criminal jurisdiction, unless the report be confirmed by the Local Government; (c) if the Court be a Court of Admiralty or of ordinary criminal jurisdiction, attended by an assessor, unless the assessor expresses his concurrence in the report.

15. *Power to arrest witnesses and cause entry and detention of vessels.*—If any Court making an investigation under this Act thinks it necessary for obtaining evidence that any person should be arrested, it may issue a warrant for his arrest, and may, for the purpose of effecting such arrest, authorize any officer (subject nevertheless to any general or special instructions from the Local Government) to enter any vessel. Any officer so authorized to enter a vessel may, for the purpose of enforcing such entry, call to his aid any officers of police or customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to affect the arrest; and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, Section 186. No person shall be detained by virtue of this Section for more than forty-eight hours.

16. *Power to commit for trial. Power to bind over persons to give evidence.*—

Whenever in course of any investigation under this Act, it appears that any person has committed an offence punishable under any law in force in British India, the Court making the investigation may (subject to such rules consistent with this Act as the High Court may from time to time prescribe) cause him to be arrested, or commit him or hold him to bail to take his trial before the proper Court; and may bind over any person to give evidence at such trial, and may for the purposes of this section exercise all the powers of a Magistrate of the first class or of a Justice of the Peace: And whenever in the course of such trial the testimony of any witness is required in relation to the subject-matter, any deposition previously made by him in relation to the same subject-matter before any Court making investigations under this Act shall, if authenticated by the signature of the Magistrate or presiding Judge, be admissible in evidence on proof—(a) that the witness cannot be found within the jurisdiction of the Court before which the trial is held; and (b) that it was made in the presence of the person accused. A certificate by the Magistrate or presiding Judge that the deposition was made in the presence of the accused shall, unless the contrary be proved, be sufficient evidence that it was so made.

17. *Chapter II. applied to charges against holders of certificates from Local Government.*—All the foregoing provisions of this chapter, except such as require reports to and communications with the Board of Trade, or relate to the actual cancellation or suspension of certificates, shall be applicable also to charges of incompetency or misconduct against any Master, Mate or Engineer who holds a certificate granted by any Local Government.

### III.—*Suspension and Cancellation of Certificates granted by Local Governments.*

18. *Local Government may suspend or cancel certificates.*—The Local Government may suspend or cancel the certificate (whether of competency or service) granted by such Local Government, or by any other Local Government, to any Master, Mate, or Engineer, in the following cases; (that is to say)—(a) If upon any investigation made under this Act, it is reported that the loss or abandonment of, or serious damage to, any ship, or loss of life, has been caused by his wrongful act or default, or the Master, Mate, or Engineer is reported to be incompetent, or to have been guilty of any gross act of drunkenness, tyranny, or other misconduct: (b) If upon any enquiry made under the provisions of the Merchant Shipping Act, 1854, or the Merchant Shipping Amendment Act, 1862, or upon any enquiry made by a Naval Court constituted as is provided by any law for the time being in force, or upon any enquiry made by any Court or tribunal for the time being authorized in any British possession to enquire into charges of incompetency or misconduct on the part of Masters, Mates, or Engineers of ships, it is reported that the loss or abandonment of, or serious damage to, any ship, or loss of life, has been caused by the wrongful act or default of the Master, Mate, or Engineer; or that he is incompetent, or has been guilty of any gross act of drunkenness, tyranny, or other misconduct: (c) If he has been superseded by the order of any Admiralty Court, or of any Naval Court constituted as provided by the Merchant Shipping Act, 1854, or by any other law for the time being in force: (d) If he is shown to have been convicted of any offence which, if committed in British India, would be non-bailable, or if committed in England, would be a felony: Provided that no certificate shall be suspended or cancelled under clause (a) of this section unless the Local Government is satisfied that the holder of the certificate had before, or within a reasonable time after, the commencement of the investigation notice of the nature of the charge made and established against him. The Local Government may, if it thinks the justice of the case requires it, re-issue and return any certificate which has been cancelled or suspended under this section, shorten the time for which it has been suspended, or grant a new certificate of the same or any lower grade in place of any certificate which has been cancelled or suspended.

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19. *Master, &c., to deliver up certificate.*—Every Master, Mate, or Engineer whose certificate is cancelled or suspended under this chapter, shall deliver it to the Shipping Master, or to such other person as the Local Government which cancelled or suspended the certificate directs, and in default shall, for each offence, incur a penalty not exceeding five hundred rupees.

20. *Report to other Local Governments.*—If the Local Government which cancels or suspends a certificate of a Master, Mate, or Engineer is not the Local Government that granted the same, the Local Government so cancelling or suspending the certificate shall report the proceedings, and the fact of cancellation or suspension, to the Local Government which granted such certificate.

21. *Report to Board of Trade.*—Every Local Government cancelling or suspending under this chapter the certificate of a Master, Mate, or Engineer shall, as soon as may be practicable, report to the Board of Trade the fact of such cancellation or suspension. Whenever it is reported to the Local Government that the loss or abandonment of, or serious damage to, any ship has been caused by the wrongful act or default of a Master, Mate, or Engineer holding a certificate from the said Board, or that such Master, Mate, or Engineer is incompetent or has been guilty of any gross act of drunkenness, tyranny, or other misconduct, the Local Government, if it concur in such report, shall send a copy of the same to the Board of Trade.

22. *Power to revoke cancellation or suspension. Power to grant new certificate.*—Any Local Government may at any subsequent time revoke any order of cancellation or suspension which it may have made under this Act, or grant to any person whose certificate it has cancelled under this Act, a new certificate of the same or of any other grade. Notice of every revocation and of every grant under this section shall, as soon as may be practicable, be reported to the Board of Trade.

23. *Saving of powers conferred on certain Admiralty Courts. Exercise of such powers by chief criminal Courts in Indian ports.*—Nothing in this Act affects the powers conferred by Section 240 of the Merchant Shipping Act, 1854, or by Section 80 of the said Act i. of 1859, on Courts having admiralty jurisdiction in India. The said powers may be exercised by the principal Court of ordinary criminal jurisdiction at any port in India where there is no Court having admiralty jurisdiction, if the Master, Mate, or Engineer has received his certificate from any Local Government.

### IV.—Agreements with Seamen.

24. *Masters to enter into agreements with seamen.*—The Master of every ship, except ships of a burden not exceeding three hundred tons employed only in the home-trade, shall enter into an agreement with every seaman whom he carries to sea from any port in India as one of his crew, in the manner hereinafter mentioned.

25. *Form and contents of agreement.*—Every such agreement shall be in a form sanctioned by the Governor General in Council, and shall be dated at the time of the first signature thereof, and shall be signed by the Master before any seaman signs the same, and shall contain the following particulars as terms thereof; (that is to say)—(a) either the nature and, as far as practicable, the duration of the intended voyage or engagement, or the maximum period of the voyage or engagement, and the places or parts of the world, if any, to which the voyage or engagement is not to extend; (b) the number and description of the crew, specifying how many are engaged as sailors; (c) the time at which each seaman is to be on board or to begin work; (d) the capacity in which each seaman is to serve; (e) the amount of wages which each seaman is to receive; (f) a scale of the provisions which are to be furnished to each seaman; and (g) any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which have been sanctioned by Government as regulations proper to be adopted, and which the

## HIGH COURTS' CRIMINAL PROCEDURE.

parties agree to adopt. And every such agreement shall be so framed as to admit of stipulations to be adopted at the will of the master and seaman in each case (not being inconsistent with the provisions of this Act), as to advance of wages and supply of warm clothing, and may contain any other stipulations which are not contrary to law.

26. *Provision where lascars are shipped.*—When it is agreed that the service of any lascar or other native seaman shall end at any port not in India, the agreement shall, in addition to the particulars specified in Section 25, contain stipulations for providing for him fit employment on board some other vessel bound to the port at which he was shipped, or such other port as may be agreed on, or for providing for him a passage to some such port as aforesaid free of charge, or on such other terms as may be agreed on; and every such stipulation shall be signed by the owner of the vessel, or by the master on his behalf. *Explanation.*—In this section the word “seaman” includes also a native of India carried to sea from any port in India as one of the crew of a ship.

27. *Forms for British or Colonial ships.*—If the Master of any ship belonging to the United Kingdom or any British possession has an agreement with his crew, made in due form according to the law of the place to which such ship belongs, or in which her crew were engaged, and engages a single seaman in any port in India, such seaman may sign the agreement so made, and it shall not be necessary for him to sign an agreement under this Act.

### V.—Miscellaneous.

28. *Sections 3 to 27 to be taken as part of Act i. of 1859.*—Sections 3 to 27 (both inclusive) shall be read with and taken as part of the said Act No. i. of 1859.

29. *Provisions as to examinations, &c., of Masters not to apply to certain ships.*—Sections 9 to 16 (both inclusive) of the said Act No. i. of 1859 shall not apply to ships registered under the said Act No. x. of 1841 and trading between ports in India and the coasts of Arabia, when such ships are navigated and manned exclusively by Arabs, lascars, or other Asiatic masters and seamen.

30. *Amendment of Act x. of 1841, Secs. 2, 15, 17, and 23.*—In the said Sections 2, 15, 17, and 23 of the said Act No. x. of 1841, for the words “on information in any Court of Her Majesty or the East India Company by the Advocates General of the respective Presidencies,” “by information as aforesaid,” “on information as aforesaid,” “upon information as aforesaid,” in each of the places where they occur, the following words shall be substituted (namely):—“on conviction before a Justice of the Peace or a Magistrate of the first class.”

31. *Powers of Pilot Court.*—The Court conducting a trial under the said Act No. xii. of 1859, shall have the same powers to compel the attendance and examination of witnesses as are conferred by this Act on Courts making investigations under Section 4.

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## ACT No. X. OF 1875.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 9th March 1875.)

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AN ACT to regulate the Procedure of the High Courts in the exercise of their original criminal jurisdiction.

*Preamble.*—Whereas it is expedient to consolidate and amend the law relating to the procedure of the High Courts in the exercise of their original criminal jurisdiction; It is hereby enacted as follows:—

## HIGH COURTS' CRIMINAL PROCEDURE.

### I.—Preliminary.

1. *Short title.*—This Act may be called "The High Courts' Criminal Procedure Act, 1875 :". It extends to the whole of British India ; and it shall come into force on the first day of May 1875.

*Note.*—The numbers in brackets placed after the numbers of the Sections refer to the corresponding Sections of the Criminal Procedure Code.

2 (71). *Repeal of enactments.*—The enactments mentioned in the schedule hereto annexed are repealed to the extent mentioned in the third column of the said schedule, but not so as to revive any practice thereby abolished. And all rules made under any of the said enactments shall be deemed to have been made under this Act, so far as they are consistent herewith.

3. *Interpretation clause.*—In this Act, unless there be something repugnant in the subject or context—

"High Court" includes all High Courts established or to be established under the twenty-fourth and twenty-fifth of Victoria, Chapter 104, the Chief Court of the Panjáb, and such other Courts as the Governor General in Council may, from time to time, declare to be invested with the powers of a High Court under this Act :

"Chief Justice" includes also the Senior Judge of a Chief Court :

"Advocate General" includes also a Government Advocate :

"Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Act to the Clerk of the Crown ; and

"Magistrate" includes also a Police Magistrate in the Towns of Calcutta, Madras, and Bombay :

"European British subject" means—

(a) all subjects of Her Majesty born, naturalized, or domiciled in the United Kingdom of Great Britain and Ireland or in any of the European, American or Australian colonies or possessions of Her Majesty, or in the colonies of New Zealand, the Cape of Good Hope and Natal ;

(b) the children and grandchildren of any such person by legitimate descent :

"Prosecutor" includes every person conducting a prosecution on behalf of Her Majesty :

"Offence" denotes anything made punishable by any law for the time being in force ; and

words which refer to acts done extend also to illegal omissions.

*Note.*—This definition of the word "offence" is much broader than that in the Indian Penal Code (see Sect. 40, p. 30), and extends to offences under English law.

### II.—Of Sessions.

4. *Time of holding sittings.*—For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

5. *Place of holding sittings.*—The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor General in Council in the case of the High Court at Fort William, and as the Local Government in the case of the other High Courts, may direct. But it may, from time to time, in the case of the High Court at Fort William, with the consent of the Governor General in Council, in all other cases, with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints. Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

## HIGH COURTS' CRIMINAL PROCEDURE.

### III.—Of Procedure on Commitments.

6. *Cases tried by High Courts to be tried under this Act.*—The provisions of this Act shall apply to all criminal cases triable by the High Court.

*Note.*—Sections 29 to 35 of the High Court Act xviii. of 1862 are to the following effect :—

**Sect. 29.** *Trials for murder, &c., if the act which caused the death, or the death took place within the jurisdiction.*—Any person accused of murder, or of culpable homicide not amounting to murder, may be dealt with, tried, and punished by any of Her Majesty's Supreme Courts of Judicature, if the act which shall have caused the death shall have been committed wholly or partly within the local limits of the jurisdiction of such Court, or if the death shall have taken place within such local limits, in the same manner as if both the act had been committed and the death had taken place within such local limits.

**Sect. 30.** *Supreme Court may deal with offence either commenced or completed within local jurisdiction.*—Any person accused of an offence, may be dealt with, tried, and punished by any of Her Majesty's Supreme Courts of Judicature, if the offence shall have been either commenced or completed within the local limits of the jurisdiction of such Court in the same manner as if the offence had been wholly and entirely committed within such local limits.

**Sect. 31.** *Act or consequence within jurisdiction.*—Whenever the offence of which any person shall be accused, shall consist of anything which has been done and of any consequence which has ensued therefrom, the person accused may be dealt with, tried, and punished by any of Her Majesty's Supreme Courts of Judicature, if either the act shall have been done or the consequence shall have ensued within the local limits of the jurisdiction of such Court, in the same manner as if both the act had been done and the consequence had ensued within such local limits.

**Sect. 32.** *Receiving stolen Property.*—Whenever a person shall be accused of any offence punishable under Section 411, 412, 413, or 414 of the Indian Penal Code, in respect to the receiving or retaining of stolen property, such person may be dealt with, tried, and punished by any of Her Majesty's Supreme Courts of Judicature, if the offence by which the possession of the property shall have been transferred, shall have been committed wholly or in part within the local limits of the jurisdiction of such Court, or if any of the stolen property shall have been received or retained by the person accused within such local limits.

**Sect. 33.** *Dishonest removal or concealment of property.*—If any person shall be accused of any offence under Section 424 of the Indian Penal Code of dishonestly or fraudulently concealing or removing any property of himself, or of any other person, or of dishonestly or fraudulently assisting in the concealment or removal thereof, such person may be dealt with, tried, and punished by any of Her Majesty's Supreme Courts of Judicature, if the property shall have been concealed or removed in any place within the local limits of such Court, or shall have been removed from any place within such local limits.

**Sect. 34.** *Offence committed on boundary.*—If any act shall have been committed or the consequence of any act shall have ensued on the boundaries of the local jurisdiction of such (High) Court, or so near to such boundaries as to render it doubtful whether such act was committed or such consequence ensued within such local limits or not, such act or consequence may for all purposes be stated, deemed, and taken to have been committed or to have ensued within such local limits.

**Sect. 35.** *Offences committed on a journey.*—If any person shall be accused of any offence alleged to have been committed on a journey, or on any voyage, in British India, such person may be dealt with, tried, and punished by any of Her Majesty's Supreme Courts of Judicature, if any part of the journey, or voyage, shall have been performed within the local limits of such Court.

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7. *Consideration and amendment of charge.*—When any person is committed for trial before a High Court, the Clerk of the Crown, or, if there be not a Clerk of the Crown, a Judge of the High Court, shall, on receipt of the charge, peruse and consider it, and may, if it appear necessary or expedient so to do, alter or redraw the same, having regard to the rules as to the form of charges contained in the Code of Criminal Procedure.

*Note.*—Section 26 of the High Court Act xviii. of 1862 provides that :—

It shall not be necessary to allege in an indictment (charge) any circumstances for the purpose of showing that the case does not come, nor shall it be necessary to allege that the case does not come, within any of the general exceptions contained in Chapter IV. of the Indian Penal Code, or within the exceptions contained in Section 136, Section 300, Section 323, Section 324, Section 325, Section 326, Section 375, or Section 499 of the said Code, but every charge shall be understood to assume the absence of all such circumstances, and it shall not be necessary on the part of the prosecutor to prove at the trial the absence of such circumstance in the first instance ; but the person indicted (charged) shall be entitled to give evidence of the existence of any such circumstances, and evidence in disproof thereof may then be given on the part of the prosecutor.

Section 27 that :—

In proving the existence of circumstances as a defence under the 2nd, 3rd, 5th, 6th, 7th, 8th, 9th, or 10th exception to Section 499 of the Indian Penal Code, good faith shall be presumed unless the contrary appear.

And Section 28 that :—

In every indictment (charge), words used in describing an offence, shall be deemed to have been used in the sense attached to them by the Indian Penal Code.

8 (446). *How Court may deal with charge.*—If a prisoner is committed to the Court without any charge at all, the Clerk of the Crown, or, if there be not a Clerk of the Crown, a Judge of the High Court, may draw up a charge, having regard to the rules referred to in Section 7. If a prisoner is committed upon a charge which the Court, upon reference to the proceedings before the committing Magistrate, considers improper, the Court may draw up a charge for any offence or offences which it considers to be proved by the evidence taken before the committing Magistrate.

9 (444). *Prisoner may apply for amendment.*—Any accused person may apply to the Court for an amendment of the charge made against him ; and in considering whether any error in a charge did in fact mislead the accused person, the Court shall take into account the fact that he did or did not make such an application.

10 (445). *Court may amend charge.*—The Court may, upon the application of the accused person, or of the prosecutor, or upon its own motion, amend or alter any charge at any stage of the proceedings before the verdict of the jury is delivered. Such amendment shall be explained to the accused person.

11 (447). *When trial may proceed immediately after amendment.*—If the amendment or alteration is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused person in his defence, it shall be at the discretion of the Court, after making such amendment or alteration, to proceed with the trial as if the amended charge had been the original charge.

12 (448). *When new trial may be directed or trial suspended.*—If the amendment or alteration is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused person in his defence, the Court may either direct a new trial, or suspend the trial for such period as may be necessary to enable the accused person to make his defence to the amended or altered charge ; and, after hearing his defence, the Court may, if it thinks fit, further adjourn the trial, to admit of the appearance of any

witness whose evidence the Court may consider to be material to the case, or whom the accused person may wish to be summoned in his defence.

13 (446, 199, 201). *Charge to be recorded. Copy of charge.*—The charge, with such alterations (if any) as may have been made therein, shall be recorded in the High Court, and a copy of such charge shall be given to the person gratis, if he demands it. The person charged shall also be entitled to a copy of his own examination before the committing Magistrate, and to copies of the examinations of witnesses upon whose depositions he has been committed, and of all documents read and made exhibits as part of such depositions by the committing Magistrate, if the person charged demands them a reasonable time before the case comes on for trial, and pays for the same a reasonable sum not exceeding one anna for each folio of ninety words. The Court may for any special reason remit any such payment.

14. *Entry on unsustainable charge. Effect of entry.*—When any charge, or portion of a charge, recorded as aforesaid appears to a Judge of the High Court, at any time before the commencement of the trial of the person charged, to be clearly unsustainable, such Judge may make on the charge an entry to that effect. Such entry shall have the effect of staying proceedings upon the charge or portion of the charge (as the case may be), but shall not operate as an acquittal of the person charged.

15 (449). *Prosecutor and accused person may recall witnesses.*—In all cases of amendment or alteration of a charge during the trial, the prosecutor and accused person shall be allowed to recall and examine any witness who may have been examined.

16 (450). *Previous sanction to be obtained if offence in amended charge require it.*—If the offence stated in the amended or altered charge be one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained; unless sanction has been already obtained for a prosecution on the same facts as those on which the amended or altered charge was founded.

#### *Joinder of Charges.*

17 (452).—*Separate charges for distinct offences.*—There must be a separate charge for every distinct offence of which any person is accused, and every such charge must be tried separately, except in the cases hereinafter excepted.

#### *Illustration.*

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and the causing grievous hurt.

18 (453). *More offences than one of same kind may be charged within a year of each other.*—When a person is accused of more offences than one of the same kind, committed within one year of each other, he may be charged and tried at the same time for any number of them not exceeding three. *Explanation.*—Offences are said to be of the same kind under this section if they fall within the provisions of Section 20.

19 (454). I. *Trial of more than one offence.*—If in one series of acts, so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried for every such offence at the same time.

II. *One offence falling within two definitions.*—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being, by which offences are defined or punished, the person accused of them may be charged with each of the offences so committed; but he must not receive a more severe punishment than could be awarded for any of such offences.



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III. *Acts severally constituting more than one offence but collectively coming within one definition.*—If several acts, of which one or more than one would by itself constitute an offence, form, when combined, a different offence, the person accused of them may be charged with every offence, or any of the different offences, which he may have committed; but he must not receive for such offences, collectively, a punishment more severe than that which might have been awarded for any one of such offences.

### *Illustrations.*

To paragraph I.

- (a.) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be separately charged with, convicted of, and punished for, offences under Sections 225 and 333, Indian Penal Code.
- (b.) A has in his possession several counterfeit seals with the intention of committing several forgeries. A may be separately charged with, convicted of, and punished for, the possession of each seal for a distinct forgery under Section 473, Indian Penal Code.
- (c.) A, with intent to cause injury to B, institutes proceedings against him, knowing there is no just or lawful ground for such proceedings. A also, in the course of the proceedings, falsely charges B with having committed an offence. A may be separately charged with, convicted of, and punished for, two offences under Section 211, Indian Penal Code.
- (d.) A, with intent to injure B, brings a false charge against him of having committed an offence. On the trial, A gives false evidence against B. A may be separately charged with, convicted of, and punished for, offences under Sections 211 and 194 or 195, Indian Penal Code.
- (e.) A, knowing that B, a female minor, has been kidnapped, wrongfully confines her and detains her as a slave. A may be separately charged with, convicted of, and punished for, offences under Sections 368 (read with 367) and 370, Indian Penal Code.
- (f.) A, with six others, commits the offences of rioting, grievous hurt to B, and of assaulting C, a public servant engaged in suppressing the riot. A may be separately charged with, convicted of, and punished for, offences under Sections 147, 325 and 152, Indian Penal Code.
- (g.) A criminally intimidates B, C and D at the same time. A may be separately charged with, convicted of, and punished for, each of the three offences under Section 506, Indian Penal Code.
- (h.) A intentionally causes the death of three persons by upsetting a boat. A may be separately charged with, convicted of, and punished for, three offences under Section 302, Indian Penal Code.

To paragraph II.

- (i.) A commits mischief by cutting down a tree in a Government forest. The tree overhangs the bank of a river and falls into the stream. A commits theft by having severed the tree and by floating it down the river to his village, where he sells it. A may be separately charged with, and convicted of, offences under Sections 426 and 379, Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under Section 379 only.
- (j.) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under Sections 352 and 323 of the Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under Section 323 only.
- (k.) A wrongfully kills a buffalo worth sixty rupees belonging to B, and then takes away the carcass in a manner amounting to theft. A may be separately charged with, and convicted of, offences under Sections 429

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and 379, Indian Penal Code ; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under Section 429 only.

- (l.) Several stolen sacks of corn are made over to A and B, who know they are stolen property. A and B thereupon assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under Sections 411 and 414, Indian Penal Code ; but the Court which tries them may not inflict a severer sentence than if it had convicted them under one of those sections only.
- (m.) A uses a forged document in evidence, in order to convict B, a public servant, of an offence under Section 167. A may be separately charged with, and convicted of, offences under Sections 471 (read with 466) and 196 of the Indian Penal Code ; but the Court which tries him may not inflict a severer sentence than if it had convicted him under one of those sections only.

To paragraph III.

- (n.) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under Sections 454 and 497, Indian Penal Code ; but the Court which tries him may not inflict a severer sentence than if it had convicted him under Section 497 only.
- (o.) A robs B, and, in doing so, voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under Sections 323, 392 and 394 of the Indian Penal Code ; but the Court which tries him may not inflict a severer sentence than if it had convicted him under Section 392 or 394 only.
- (p.) A entices B, the wife of C, away, and then commits adultery with her. A may be separately charged with, and convicted of, offences under Sections 498 and 497, Indian Penal Code ; but the Court which tries him may not inflict a severer sentence than if it had convicted him under Section 497 only.

20 (455). *Where it is doubtful what offence has been committed.*—If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused person may be charged with having committed all or any of such offences ; and any number of such charges may be tried at once, or he may be charged in the alternative with having committed some one of the said offences.

### *Illustration.*

A is accused of an act which may amount to either theft, receiving stolen property, criminal breach of trust or cheating. He may be charged separately with theft, criminal breach of trust, and cheating, or he may be charged with having committed either theft, or criminal breach of trust, or cheating.

21 (456). *When a person is charged with one offence, he can be convicted of another.*—If, in the case mentioned in Section 20, one charge only is brought against an accused person, and it appears in evidence that he committed a different offence, for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

### *Illustration.*

A is charged with theft. It appears that he committed criminal breach of trust, or receiving stolen goods. He may be convicted of criminal breach of trust, or receiving stolen goods, though he was not charged with it.

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22 (457). *When offence proved included in offence charged.*—When a person is charged with an offence, and part of the charge is not proved, but the part which is proved amounts to a different offence, he may be convicted of the offence which he is proved to have committed, though he was not charged with it.

### *Illustrations.*

- (a.) A is charged, under Section 407, Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under Section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under Section 406.
- (b.) A is charged with murder. He may be convicted of culpable homicide, or of causing death by negligence.

23 (458). *What persons may be charged jointly.*—When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks proper, and the provisions hereinbefore contained shall apply to all such charges.

### *Illustrations.*

- (a.) A and B are accused of the same murder. A and B may be charged and tried together for the murder.
- (b.) A and B are accused of a robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.
- (c.) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with the one theft, and B alone with the two other thefts.

24 (443). *Effect of errors.*—No error, either in the way in which the offence is stated, or in the particulars required by the Code of Criminal Procedure to be stated, and no omission to state the offence, or to state those particulars, shall be regarded at any stage of the case as material, unless the person accused was in fact misled by such error or omission.

### *Illustrations.*

- (a.) A is charged, under Section 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit;" the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.
- (b.) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.
- (c.) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

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- (d.) A is charged with the murder of Khodá Baksh on the 21st January. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.
- (e.) A was charged with murdering Haidar Baksh on the 20th January, and Khodá Baksh (who tried to arrest him for that murder) on the 21st January. When charged for the murder of Haidar Baksh, he was tried for the murder of Khodá Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

*Note.*—The reference to the particulars required by the Code of Criminal Procedure shows that charges under the High Courts' Criminal Procedure Code are to be done up in accordance with the provisions of Sections 439, 440, and 441 of the Code of Criminal Procedure, p. 701-703.

25 (33). *When irregular commitments may be validated.*—If any Magistrate or other authority purporting to exercise powers conferred, but not being actually so empowered, commits an accused person to take his trial before a High Court, the Court may, after perusal of the proceedings, accept the commitment if it considers that the accused person has not been prejudiced, unless objection was made on behalf either of the accused person or of the prosecution to the jurisdiction of the committing Magistrate during the inquiry and before the order of commitment. If such Court considers that the accused person was prejudiced, or if such objection as aforesaid was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

26. *Custody pending direction as to place of trial.*—Pending the directions of the Court as to the place of trial, every person committed for trial shall (if not admitted to bail) be committed by the Magistrate for intermediate custody to the criminal jail in which he can be most conveniently confined. If the trial be directed to be held at the ordinary place of sitting of the Court, the Magistrate shall bind over the person charged to appear and take his trial at such place of sitting, or shall commit him to the jail at such place. If the Court direct that the person charged be tried elsewhere than at its ordinary place of sitting, the Magistrate shall bind him over to appear and take his trial at the place so directed, or shall, if necessary, cause him to be removed to the criminal jail at or nearest to the place at which he is directed to be tried.

27. *Intermediate custody of European British subjects.*—The Court may direct that all European British subjects committed or bailed for trial by it within certain specified districts or during certain specified periods of the year, shall be tried at the ordinary place of sitting of the Court, or direct that they shall be tried at a particular place named, and may also order that they shall, if not bailed, be committed for intermediate custody to a particular jail, being one of the jails appointed by the Government for the reception of such prisoners.

### IV.—Of the Commencement of the Trial.

28 (237). *Commencement of trial.*—When the Court is ready to commence the trial, the accused person shall be brought before it, and the charge shall be read and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

29 (237). *Plea of guilty.*—If the accused person pleads guilty, the plea shall be recorded, and he may be convicted thereon.

30 (238). *Refusal to plead or claim to be tried.*—If the accused person refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors as hereinafter directed, and to try the case.

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31 (186). *Right of accused to be defended.*—Every person accused of an offence may of right be defended by any advocate of a High Court.

Any such person may, with the permission of the Court (but not otherwise), employ any person not being an advocate, attorney or pleader, to assist him in his defence.

### V.—Of Juries.

#### (a) Of Juries generally.

32. *Trials to be by jury.*—All trials under this Act shall be by jury ; and, notwithstanding anything contained in Section 64 of the Code of Criminal Procedure, in all criminal cases transferred to a High Court under that section or under the Letters Patent of any High Court established under the 24th and 25th of Victoria, chap. 104, the trial may, if the High Court so direct, be by jury.

33. *Number of jurors.*—The jury shall consist of nine persons, who shall be chosen by lot from the persons summoned to act as jurors : provided that, in case of a deficiency of such persons, the number required may, with the leave of the Court, be chosen from such other persons as may be present.

34 (265). *Successive trials by same jury.*—Subject to the right of challenge hereinafter mentioned, the same jury may try as many accused persons successively as the Court thinks fit.

35. *Majority of jurors for trial of European British subjects.*—If before the first juror is called and accepted, any European British subject charged as aforesaid requires to be tried by a mixed jury, the majority of the jurors shall consist of Europeans or Americans, or both Europeans and Americans.

36. *Trial of European British subject and Native jointly accused.*—In any case in which a European British subject is accused jointly with a person not being a European British subject, and such European British subject is committed for trial before a High Court, the person so jointly accused shall (if the committing Magistrate thinks that he ought to be tried) also be committed for trial before such High Court, notwithstanding any provision to the contrary in the Code of Criminal Procedure. Such persons may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately.

37. *Provisions for European British subject requiring majority of Europeans in jury. Native may claim separate trial.*—Provided that, if before the first juror is called and accepted the European British subject requires the majority of the jurors to consist of Europeans or Americans, or both Europeans and Americans, and the person not being a European British subject requires that he shall be tried separately by a jury of which at least five members shall be persons not being Europeans or American, the latter person shall be tried separately.

#### (b) Of Juries in the Presidency Towns.

38. *Trials before special jury.*—Every person tried in Calcutta, Madras or Bombay shall be tried before a special jury

- (a) if charged with having committed an offence punishable with death, or
- (b) if in any other case a Judge of the High Court so directs.

39. *Jurors' book.*—The jurors' book for the year current when this Act comes into force, shall be taken as containing a correct list of persons liable to serve as jurors under this Act ; and those persons whose names are entered in the said book as being liable to serve on special juries only shall be deemed to be persons privileged and liable to serve only as special jurors under this Act during the year for which the said list has been prepared.

40. *Number of special jurors.*—The names of not more than two hundred persons shall at any one time be entered in the special jurors' list.

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41. *Exemption of special jurors.*—All persons whose names are entered in the special jurors' list shall be exempted from serving on any other than special juries, but so long only as their names are contained in such list.

42. *Lists of common and special jurors.*—The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare

(a) a list of all persons liable to serve as common jurors ;

(b) a list of persons liable to serve as special jurors only.

Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein. No person shall be entitled to have his name entered in the special jurors' list, merely because he may have been entered in the special jurors' list for a previous year. The Governor General in Council may exempt any salaried officer of Government from serving as a juror.

43. *Discretion of officer preparing lists.*—The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

44. *Publication of lists.*—Preparatory lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the officer by whom the same have been prepared, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation. Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation. Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

45. *Number of jurors to be summoned. Supplementary summons.*—Out of the persons named in the revised lists aforesaid, there shall be summoned for each session at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries. No person shall be so summoned more than once in six months unless the number cannot be made up without him. If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

46. *Failure of jurors to attend.*—Any person summoned under Section 45 who without lawful excuse fails to attend as required by the summons, or who having attended departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable by order of the Judge to such fine as he thinks fit, and, in default of payment of such fine, to imprisonment in the civil jail until the fine is paid.

47. *Peremptory challenges.*—Challenges without cause shown shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged. The following and no others shall be good causes of challenge, whether on behalf of the Crown or by the person or persons charged :—

(a) some personal objection, such as alienage, infancy, old age, or deficiency in the qualification required by any law or rule having the force of law for the time being in force :

(b) some presumed or actual partiality in the juror :

(c) a previous conviction of the juror of a non-bailable offence under the Indian Penal Code, or of a similar offence under any other law in force in British India :

(d) inability to understand English when spoken.

48. *Trial of challenges.*—The Judge before whom a person charged is about to be tried shall try any challenge, other than a challenge without cause shown ;

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and if the Judge allow the challenge, the juror shall be set aside. The decision of the Judge as to any challenge shall be final.

49. *Powers of Presidency High Courts as to jurors.*—Save as herein provided, the High Courts of Judicature at Fort William, Madras and Bombay shall retain all their present powers respecting the summoning, empannelling, qualification, challenging, and service of jurors, and shall have power to make such rules on these subjects (consistent with the provisions of this Act) as seem to them to be proper. All rules relating to jurors now in force in the same High Courts shall (so far as they are consistent with this Act) remain in force until repealed or altered by new rules made under this section.

### (c) *Of Juries in the Mofussil.*

50. *Summoning jurors.*—Whenever a High Court has given notice of its intention to hold sittings at any place (other than the towns of Calcutta, Madras and Bombay) for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, take and cause to be taken the measures prescribed by Sections 407, 409, 410, and 411 of the Code of Criminal Procedure for the summoning of jurors.

51. *Military jurors.*—In addition to the persons so summoned as jurors, the said Court of Session shall, if it think needful, after communication with the Commanding Officer, cause to be summoned such number of Commissioned and Non-Commissioned Officers in the military service, resident within ten miles of its place of sitting, as the Court considers to be necessary to make up the juries required for the trial of European British subjects charged with offences before the High Court as aforesaid. All Commissioned and Non-Commissioned Officers so summoned shall be liable to serve on such juries notwithstanding anything contained in the Code of Criminal Procedure; but no Commissioned or Non-Commissioned Officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

52 (240-246). *Juries for trial of European British subjects.*—The juries for the trial of European British subjects as aforesaid shall be formed in the manner required by the Code of Criminal Procedure and by this Act from the persons summoned in accordance with Sections 50 and 51.

*Note.*—Section 78 of the Criminal Procedure Code (p. 510) (which, it seems, applies, under this section, to juries for the trial of European British subjects), read with Section 35 of this Act, shows that in all cases of the trial of European British subjects, not less than half the number of jurors must be European British subjects; while on the requirement of the European British subject under trial, a majority of the jurors must consist of Europeans or Americans or Europeans and Americans.

53 (243). *Names of jurors to be called.*—As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused person shall be asked if he objects to be tried by such juror. Objection may then be made to such juror by the accused person, or by the prosecutor, and the grounds of objection shall be stated.

54 (244). *Grounds of objection.*—Any objection made to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:—

- (a) his holding any office in or under the Court or the local Court of Session;
- (b) his executing any duties of Police or being entrusted with any Police functions;
- (c) his having been convicted of any offence against the State, or of any fraudulent or other offence which, in the judgment of the Court, renders him unfit to serve on the jury;

(d) his having by habit or religious vows, relinquished all care of worldly affairs ;

(e) his standing in the relation of husband, master, servant, landlord or tenant, to the person alleged to be injured, or attempted to be injured, by the offence charged, or to the person accused ;

(f) his being in the employment of any of such persons ;

(g) his being plaintiff or defendant in any civil suit against any of such persons ;

(h) his having complained against, or having been accused by, any of such persons in any criminal prosecution ;

(i) any circumstance which, in the judgment of the Court, is likely to cause prejudice against, or favour to, any of such persons, or which renders such person improper as a juror.

55 (243). *Decision of objection.*—Any objection made to a juror shall be decided by the Court, and such decision shall be final.

56. *Supply of place of juror against whom objection allowed.*—If the objection be allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons ; or, if there be no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury ; provided no objection to such other juror or person be made and allowed under Section 54.

57 (245). *Juror to understand language in which evidence is given or interpreted.*—The Judge shall not allow any person to serve on the jury, unless such person understands the language in which the evidence is given or interpreted.

## (d) Of the Foreman.

58 (246). *Foreman of jury.*—When the jury has been completed, they shall appoint one of their number to be foreman. It shall be the duty of the foreman to preside in the debates of the jury, to deliver the verdict of the jury, and to ask any information from the Court that may be required by the jury or any of the jurors. If a majority of the jury do not agree in the appointment of a foreman, he shall be appointed by the Court.

## VI.—Of the Trial.

59 (247). *Examination of witnesses.*—The prosecutor shall then open his case, and the witnesses shall be examined, cross-examined and re-examined according to the law for the time being relating to the examination of witnesses.

60 (248). *Examination of accused before Magistrate to be evidence.*—The examination of the accused person before the committing Magistrate shall be given in evidence at the trial.

61 (250, 343, 345). *Examination of accused.*—The Court may from time to time, at any stage of the trial, examine the accused person. The accused person shall not be liable to any punishment for refusing to answer, or for answering falsely, questions asked under this section, but the Court shall draw such inference as seems just from such refusal or false answer. No oath or affirmation shall be administered to the accused person.

62 (251). *Defence.*—When the examination of the witnesses for the prosecution and the examination of the accused person are concluded, the accused person shall be asked whether he means to call witnesses. If he says that he does not, the prosecutor may sum up his case. The Court may then, if it thinks that there are no grounds for proceeding, direct the jury to return a verdict of acquittal. If the Court considers that there are grounds for proceeding, it shall call on the accused person to state his grounds of defence and produce his witnesses. The accused person or his Counsel may then state the case for



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the defence, and may examine the witnesses, if any, produced for the defence, and at the conclusion of such examination may sum up his case.

*Note.*—"Counsel," it would appear, includes any one appearing for the accused under Section 31. In Section 251 of the Criminal Procedure Code (p. 600) the words "Counsel, or authorized agent" are used.

63 (252). *Prosecutor's right of reply.*—If any evidence is adduced on behalf of the accused person, the prosecutor shall be entitled to reply.

64 (253). *View by jury.*—Whenever, in the opinion of the Court, it is proper and convenient that the jury should view the place in which the offence charged is said to have been committed, or any other place in which any other transaction material to the inquiry in the trial took place, an order shall be made to that effect, and the jury shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court. Such officer shall not suffer any other person to speak to, or hold any communication with, any of the jury.

65. *Locking-up jury.*—The High Court may from time to time make rules as to keeping the jury together during a trial lasting for more than one day, and, subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

66 (264). *Postponement of trial. Adjournment.*—The Court may, in its discretion, postpone the hearing of the case; and may, from time to time, adjourn the trial, if it considers that such adjournment is proper and will promote the ends of justice.

67 (260). *Jury to attend at adjourned sitting.*—If a trial is adjourned, the jury shall be required to attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

68. *Power to prescribe mode in which evidence shall be taken down.*—The Court may, if it think fit, from time to time by general rule prescribe the manner in which evidence shall be taken down in cases coming before the Court in the exercise of its ordinary or its extraordinary original criminal jurisdiction, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

69 (258). *Evidence of jurors.*—If a jurymen is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be examined, cross-examined and re-examined, in the same manner as any other witness.

70 (422). *Interpreter.*—When the services of an interpreter are required by the Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

### VII.—Of Evidence.

71 (323). *Evidence of medical witness.*—The examination of a Civil Surgeon or other medical witness, taken and duly attested by a Magistrate, may be given in evidence in any criminal trial, although the person examined is not called as a witness. The Court may summon such Civil Surgeon or other medical witness, if it sees sufficient cause for doing so.

72 (325). *Report of Chemical Examiner.*—Any document purporting to be a report from the Chemical Examiner, or Assistant Chemical Examiner, to Government, upon any matter or thing duly submitted to him for examination or analysis and report, in the course of any criminal trial, or in any preliminary inquiry relating thereto, may, if it bears his signature, be used as evidence in any criminal trial. The Court may presume that the signature of any such document is genuine, and that the person signing it held the office which he professed to hold at the time when he signed it.

73 (324). *Admission of accused.*—If, after the commencement of the trial, the

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accused person admits before the Court the commission of an offence, the Court may convict him on his own admission, whether such offence is the same as the offence of which he is accused, or not.

74 (327). *Record of evidence in absence of accused.*—If an accused person abscond, and after due pursuit cannot be arrested, the Court may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution and record their depositions; and any such deposition may, on the arrest of such person, be read in on his trial for the offence with which he is charged if it is not practicable to procure the attendance of the deponent.

75 (249). *Evidence given at preliminary inquiry.*—When a witness is produced, the evidence (if any) given by him before the committing Magistrate may, in the discretion of the presiding Judge, be treated as evidence in the case, if it was duly taken in the presence of the accused person.

*Explanation.*—This section shall not authorize the Court to refer to the record of the evidence given by a witness who is absent, except in the cases in which such evidence may be referred to under the Indian Evidence Act, 1872, or other law in force for the time being upon the subject of evidence.

### *Commissions.*

76 (330). *When a commission may issue.*—Whenever, at any time after the commitment, it appears that the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the Court may dispense with his personal attendance. The Court may direct a commission to the Magistrate of the District, or to a Magistrate of the first class, in whose jurisdiction such witness may be. The Magistrate to whom the commission is directed shall proceed to the place where such witness is, or shall summon such witness before himself. Such Magistrate shall take the evidence of such witness in the same manner, and shall have for this purpose, and may exercise, the same powers as in trials of warrant cases under the Code of Criminal Procedure. When the witness is in the territories of any Native Prince or State in India in alliance with Her Majesty, the commission may be directed to any Justice of the Peace or other officer in the service of the Crown resident in such territories; and the provisions of the second clause of this section shall apply to such Justice of the Peace or officer.

If the witness is within the local limits of the ordinary original criminal jurisdiction of any of the High Courts of Judicature at Fort William, Madras and Bombay, the commission may be directed to any Police Magistrate within such limits, and such Magistrate shall have the like power to compel the attendance and examination of witnesses as he possesses for that purpose in cases pending before him.

The prosecutor and the accused person may forward interrogatories, upon which the officer to whom the commission is directed shall examine the witness, or the prosecutor may appear personally before the officer to whom the commission is directed, or the prosecutor or accused person may so appear by authorized agent.

After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto, and the deposition of such witness may be used as evidence in the case and shall form part of the record.

### *Tender of Pardon to obtain Evidence.*

77 (347, 348). *Court may direct tender of pardon.*—The Court may, with the view of obtaining on the trial the evidence of any person or persons supposed to have been directly or indirectly concerned in, or privy to, any offence men-

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tioned in column 7 of the fourth schedule annexed to the Code of Criminal Procedure as triable exclusively by the Court of Session, instruct the committing Magistrate to tender, or itself may, at any time before judgment, tender a pardon to such person or persons, on condition of his or their making a full, true, and fair disclosure of the whole of the circumstances, within his or their knowledge, relative to the crime committed and every other person concerned in the perpetration thereof.

Any person accepting a tender of pardon under this section shall be examined as a witness in the case, under the rules applicable to the examination of witnesses.

Such person, if not on bail, shall be detained in custody pending the termination of the trial.

78 (349). *Commitment of person to whom pardon has been tendered.*—When a pardon has been tendered under Section 77, if it appears to the Court that any person, who has accepted such tender has not conformed to the conditions under which it was made, either by wilfully concealing anything essential, or by giving false evidence, the Court may commit, or direct the commitment of, such person, for trial for the offence in respect of which the pardon was so tendered, or for any other offence of which he may appear to have been guilty in connection with the same matter.

The statement made by a person under pardon, which pardon has been withdrawn under this section, may be put in evidence against him.

### *Of securing Attendance of Witnesses and Production of Documents.*

79 (350). *Procedure for obtaining attendance of witnesses.*—The following procedure shall be pursued in order to obtain the attendance of witnesses before the Court.

80 (351). *Power to summon material witness or examine person present.*—The Court may, at any stage of any proceeding, inquiry or trial, summon any witness, or examine any person in attendance though not summoned as a witness, and it shall be its duty to do so if the evidence of such person appears essential to the just decision of the case.

81 (352). *When warrant of arrest may issue in first instance.*—If the Court has reason to believe that any witness whose attendance is required will not attend to give evidence without being compelled to do so, it may, instead of issuing a summons, issue a warrant of arrest in the first instance.

82 (353). *Procedure when warrant cannot be served.*—If such warrant cannot be executed, and the Court considers that the witness is absconding or concealing himself for the purpose of avoiding the service thereof, it may issue a proclamation, requiring his attendance to give evidence at a time and place to be named therein, to be affixed on some conspicuous part of his ordinary place of abode. If the witness does not attend at the time and place named in such proclamation, the Court may order the attachment of any moveable property belonging to such witness, to such amount as seems reasonable, not being in excess of the amount of costs of attachment and of any fine to which he may be liable under the provisions of the next following section. Such order shall authorize the attachment of any such moveable property within the jurisdiction of the Court by which the order was made; and if any such moveable property be without the jurisdiction of the said Court, such order when endorsed by the Magistrate of the District in which such property is situated shall authorize the attachment of the property last aforesaid.

*Note.*—By Section 57 of the High Court Act xviii. of 1862, property "shall be understood to include goods, chattels, money, valuable securities, and every other matter or thing, whether real or personal, upon or with respect to which any offence may be committed."

83 (354). *Release of attached property of witness appearing and satisfying Court.*—If the witness appears and satisfies the Court that he did not abscond or con-

ceal himself for the purpose of avoiding the execution of the warrant, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property attached be released from attachment, and shall make such order in regard to the costs of the attachment as the Court thinks fit. If such witness does not appear, or, appearing, fails to satisfy the Court that he did not abscond or conceal himself for the purpose of avoiding the execution of the warrant, and that he had not such notice of the proclamation as aforesaid, the Court may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of any fine which may be imposed upon such witness under the provisions of Section 172 of the Indian Penal Code. If the witness pays to such Court the costs and fine as aforesaid, his property shall be released from attachment.

84 (355). *Arrest of person disobeying summons.*—If any person summoned to give evidence neglects or refuses to appear at the time and place appointed by the summons, and no reasonable excuse is offered for such neglect or refusal, the Court, upon proof of the summons having been duly served, may issue a warrant, under its seal to bring such person before it to testify as aforesaid.

85 (363). *Right of accused as to examination of witness.*—The accused person shall be allowed to examine as a witness any person in attendance.

86 (365). *Procedure for obtaining production of document required as evidence.*—Whenever the Court considers that the production of any document is necessary or desirable for the purposes of any investigation or judicial proceeding, the Court may issue a summons to the person in whose possession or power such document is believed to be, requiring him to attend and produce such document at the time and place stated in the summons.

87 (366). *When warrant for search for documents may issue.*—If there is reason to believe that the person to whom the summons is addressed will not produce the document as directed in the summons, the Court may issue a search-warrant for the document in the first instance.

88 (367). *Power to impound document produced.*—The Court may, if it thinks fit, impound any document produced before it, or may, at the conclusion of the proceedings, order such document to be returned to the person who produced it.

89 (356-364). *Procedure in case of refusal to answer or produce documents.*—If a witness refuses to answer any question which is put to him or to produce any document in his possession or power which the Court requires him to produce, and does not offer any just excuse for such refusal, he shall be deemed guilty of contempt of Court.

*Note.*—And see Sections 175, 179, Indian Penal Code, pp. 144, 152.

### VIII.—Of the Charge to the Jury.

90 (255). *Charge to jury.*—When the case for the defence and the prosecutor's reply, if any, are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

91 (256). *Duty of Judge.*—It is the duty of the Judge to decide all questions of law, and especially all questions as to the relevancy of facts which it is proposed to prove, the admissibility of evidence, or the propriety of questions asked by parties or their agents, which may arise in the course of the trial; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties; to decide upon the meaning and construction of all documents given in evidence at the trial; to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given; to decide whether any question which arises is for himself or for the jury; and upon this point his decision

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shall be final. The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

### *Illustrations.*

- (a) It is proposed to prove a statement made by a person not called as a witness, under circumstances which render evidence of his statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

- (b) It is proposed to give secondary evidence of a document, the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

### IX.—Of the Verdict and the Discharge of the Jury.

92 (263). *Retirement to consider.*—After the Judge has finished his charge, the jury may retire to consider their verdict. Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

- 93 (267). *Duty of jury.*—It is the duty of the jury—

(a) to decide which view of the facts is true, and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned ;

(b) to determine the meaning of all technical terms and words used in an unusual sense, which it may be necessary to determine, whether such words occur in documents or not ;

(c) to decide all questions which according to law are to be deemed questions of fact ;

(d) to decide whether general, indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

### *Illustrations.*

- (1.) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

- (2.) The question is, whether a person entertained a reasonable belief on a particular point. Whether work was done with reasonable skill, or due diligence.

Each of these is a question for the jury.

94 (263). *Foreman to communicate verdict.*—When the jury have considered their verdict, the foreman shall inform the Court what is their verdict, or what is the verdict of a majority.

95 (263). *Verdict to be given on each charge. Judge may question jury.*—The jury shall return a verdict on all the charges on which the accused is tried, and the Court may ask them such questions as are necessary to ascertain what their verdict is.

- 96 (263). *Procedure where jury differ.*—If the jury are not unanimous, the

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Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

97. *Verdict when to be delivered.*—A verdict of guilty or not guilty, as the case may be, shall be delivered either when the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them.

98. *Discharge of jury in default of unanimity or majority of six with Judge's concurrence.*—When the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge. If the Judge disagrees with the majority, he shall then discharge the jury. If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

99. *Discharge of jury in case of sickness of juror or prisoner.*—The Judge may also discharge the jury whenever by reason of illness a jurymen becomes incapable of attending through the trial or the prisoner becomes incapable of remaining at the bar.

100. *Re-trial of prisoner after discharge of jury.*—Whenever the jury is discharged, the prisoner shall be detained in custody or on bail (as the case may be) and shall be tried by another jury unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

101. *Power to reserve questions.*—When any person has, in a trial before a Judge of the High Court acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve for the decision of a Court consisting of two or more Judges of the High Court any question of law which has arisen in the course of the trial of such person and the determination of which would affect the event of the trial. If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the Judge think fit, be admitted to bail; and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the High Court seem fit.

102 (459-61). *Withdrawal of remaining charges, on conviction on one of several charges.*—When more charges than one are preferred against the same person, and when a conviction has been had on one or more of them, the prosecutor may, with the consent of the Court, withdraw, or the Court of its own accord may direct the withdrawal of, the remaining charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges.

### X.—Of the Sentence.

103. *Form and direction of warrant of commitment.*—Every warrant for the commitment of a person to custody shall be in writing and signed and sealed by the Judge who issues it.

104. *Provisions of Criminal Procedure Code, Sections 303, 304, 305, applied in Mofussil.*—In the case of a High Court holding its sittings elsewhere than in the towns of Calcutta, Madras or Bombay, the provisions of the Code of Criminal Procedure, Sections 303, 304, and 305, shall apply to the officers therein mentioned.

105 (307). *Levy of Fine.*—Whenever an offender is sentenced to pay a fine, the Court may issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, whether or not the offence be punishable with fine only, and whether or not the sentence direct that, in default of payment of the fine, the offender shall suffer imprisonment. Such warrant may be executed within the jurisdiction of the Court, and it shall

authorize the distress and sale of any moveable property belonging to the offender without the jurisdiction of the said Court, when endorsed by the Magistrate of the District in which such property is situate. This section shall not apply to cases in which any special procedure is laid down by any special or local law in force for the time being for the recovery of any fine, but shall apply to cases in which no such procedure is laid down, and to all fines not levied when this Act comes into force, but which might have been levied under this section if it had been in force when they were imposed.

106 (308). *Payment of fine in compensation*.—Whenever the Court imposes a fine under any law in force for the time being, the Court may order the whole or any part of the fine to be paid in compensation,

(a) for expenses properly incurred in the prosecution ;

(b) for the offence complained of, where such offence can, in the opinion of the Court, be compensated by money.

Such payment shall be made, as the Court thinks fit, to or for the benefit of the complainant, or the person injured, or both. In any subsequent civil proceedings relating to the same matter, the Court shall take into account any sum which may have been awarded under this section.

107 (309). *Imprisonment in default of payment of fine*.—In every case punishable under any law in force for the time being with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, the High Court shall be guided by the provisions of Sections 64, 65, 68, 69, and 70 of the Indian Penal Code in awarding the period of imprisonment in default of payment of fine.

108. *Execution of sentences of whipping*.—Sentences of whipping shall be executed in manner provided by the Code of Criminal Procedure, Sections 311, 312, and 313.

109 (314). *Sentence in cases of simultaneous conviction of several offences*.—When a person is convicted, at one trial, of two or more offences punishable under the same or different sections of any law for the time being in force, the Court may sentence him, for the offences of which he has been convicted, to the several penalties prescribed by such enactment or enactments, which such Court is competent to inflict ; such penalties, when consisting of imprisonment, or transportation, or penal servitude, to commence the one after the expiration of the other : Provided that in no case shall such person be sentenced to imprisonment for a longer period than fourteen years.

110 (316). *Currency of sentence on escaped convicts*.—When sentence of death or whipping is passed on an escaped convict, the Court shall direct the new sentence to take effect without waiting for the expiration of the sentence from which he has escaped. When any other sentence is passed on an escaped convict severer than the sentence from which he has escaped, the Court shall also direct the new sentence to take effect without waiting for the expiration of the sentence from which he escaped. When the new sentence is not severer than the sentence from which he has escaped, the Court shall direct the new sentence to take effect after such convict has suffered imprisonment, or transportation, or penal servitude, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence. When the former sentence on the escaped convict is or includes transportation or penal servitude for life and the Court does not sentence him to death, the new sentence shall direct that he be, as soon as practicable, sent back to the place from which he escaped. *Explanation*.—For the purpose of this section—(a) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment : (b) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of imprisonment without solitary confinement ; and (c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

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111 (317). *Sentence on offender already sentenced for another offence.*—When sentence is passed on a person actually undergoing sentence of imprisonment or transportation, and the sentence is for imprisonment or transportation, the Court shall direct such imprisonment or transportation to commence at the expiration of the imprisonment or transportation to which he has been previously sentenced; or, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be for transportation or penal servitude, the Court may direct the sentence to commence immediately, or at the expiration of the imprisonment to which such person has been previously sentenced: Provided that nothing in this section shall be held to excuse such person from any part of the punishment to which he is liable upon such former or subsequent conviction.

112 (318). *Confinement of youthful offenders in reformatories.*—When any person under the age of sixteen years is sentenced to imprisonment for any offence, the Court may direct that such offender, instead of being imprisoned in the criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Government prescribes with regard to the discipline and training of persons confined therein. All persons confined under this section shall be subject to the rules so prescribed.

113 (321). *Sentence of death.*—When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

114 (306). *Postponement of capital sentence on pregnant woman.*—If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence.

115 (418). *Order for disposal of property regarding which offence committed.*—When the trial is concluded, the Court may make such order as it thinks fit for the disposal of any property produced before it, regarding which any offence appears to have been committed. Any order under this section may be in the form of a reference to a Magistrate, who shall in such case deal with the property as if it had been seized by the Police and the seizure duly reported to him. *Explanation.*—In this section the term "property" includes not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

116 (421). *Expenses of complainants and witnesses.*—Subject to any rules that may be passed by the Local Government with the previous sanction of the Governor General in Council, the Court may order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purpose of any trial before such Court under this Act.

### XI.—Of Previous Convictions or Acquittals.

117 (460). *Person once convicted or acquitted not to be tried for same offence.*—A person who has once been tried for an offence and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 20, or for which he might have been convicted under Section 21. A person convicted or acquitted of any offence may be afterwards tried for any offence for which a separate charge might have been made against him on the former trial under Section 19, paragraph 1. A person convicted or acquitted of any offence in respect of any act causing consequences which, together with such act, constituted a different offence from that for



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which such person was acquitted or convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was acquitted or convicted. A person convicted or acquitted of any offence in respect of any facts may, notwithstanding such acquittal or conviction, be subsequently charged with and tried for any other offence which he may have committed in respect of the same facts, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

### *Illustrations.*

- (a.) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards be charged with the same theft as a servant, or, upon the same facts, with theft simply or with criminal breach of trust.
- (b.) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.
- (c.) A is tried for an assault and convicted. The person afterwards dies. A may be tried again for culpable homicide.
- (d.) A is tried under Section 270 of the Indian Penal Code for malignantly doing an act likely to spread the infection of a disease dangerous to life and is acquitted. The act so done afterwards causes a person permanently to lose his eyesight. A may be charged, under Section 325, with voluntarily causing grievous hurt to that person.
- (e.) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried for the murder of B on the same facts.
- (f.) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B, on the same facts, unless the case comes within paragraph three.
- (g.) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.
- (h.) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity, on the same facts.

118 (439). *Previous conviction to be set out in charge.*—If the accused person has been previously convicted of any offence, and if it is intended to prove such previous conviction for the purpose of affecting the punishment which is to be awarded, the fact of the previous conviction must be stated in the charge. If it is omitted, it may be added at any time before sentence is passed, but not afterwards.

119 (326). *Previous conviction or acquittal how proved.*—A previous conviction or acquittal may be proved by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had, to be a copy of the finding and sentence.

## XII.—Of Criminal Lunatics.

120 (425). *Procedure in case of person committed being lunatic.*—If any person committed for trial appears at his trial to the Court to be of unsound mind and incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness of mind, and if satisfied of the fact, shall give a special judgment that the accused person is of unsound mind and incapable of making his defence; and thereupon the trial shall be postponed. The trial of the fact

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of the unsoundness of mind of the accused person shall be deemed to be part of his trial before the Court.

121 (426). *Release of lunatic pending investigation or trial.*—Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Court, if the offence of which he is accused be bailable, may release him on sufficient security being given that he shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, and for his appearance when required. If the offence be not bailable, or if the required bail be not given, the Court shall report the case to the Local Government, and the accused person shall be kept in safe custody in such place as the Local Government directs.

122 (427). *Resumption of trial.*—Whenever a trial is postponed under Section 120, the Court may at any time resume the trial, and require the accused person, if detained in custody, to be brought before the Court; or, if he has been released on security, may require his appearance. The surety of such person shall be bound, at any time, to produce him to any officer whom the Court appoints to inspect him; and the certificate of such officer shall have the same effect as the certificate of an Inspector General of Prisons or the Visitors of Lunatic Asylums, granted under Section 127.

123 (428). *Procedure on accused appearing before Court.*—If, when the accused person appears or is again brought before the Court, it appears to such Court that he is in a fit state of mind to make his defence, he shall be put on his trial. If it appears that the accused person is still of unsound mind, and incapable of making his defence, the Court shall again act according to the provisions of Section 121.

124 (429). *Finding in case of acquittal on ground of being lunatic.*—Whenever any person is acquitted upon the ground that, at the time at which he is charged with having committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law, the finding shall state specially whether such person committed the act or not.

125 (430). *Person so acquitted to be kept in safe custody.*—Whenever such finding states that the accused person committed the act charged, the Court before which the trial was held shall, if the act charged would, but for the incapacity found, have amounted to an offence, order him to be kept in safe custody, in such place and manner as the Court thinks fit, and shall report the case for the order of the Local Government. The Local Government may order such person to be kept in safe custody in a Lunatic Asylum or other suitable place of safe custody.

126 (431). *Lunatic prisoners to be visited by Inspector General.*—When any person is confined under the provisions of Section 121 or 125, the Inspector General of Prisons, if such person is confined in a jail, or the Visitors of the Lunatic Asylums or any two of them, if he is confined in a Lunatic Asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector General or by two of such Visitors as aforesaid; and such Inspector General or Visitors shall make a special report to the Local Government as to the state of mind of such person.

127 (432). *Procedure where lunatic prisoner is reported capable of making his defence.*—If such person is confined under Section 121 and such Inspector General or Visitors as aforesaid shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Court, at such time as it appoints, and the Court shall deal with him under the provisions of Section 123; and the certificate of such Inspector General or Visitors as aforesaid shall be receivable as evidence.

128 (433). *Procedure where lunatic confined under Section 125 is declared capable of being discharged.*—If such person is confined under the provisions of Section 125, and such Inspector General or Visitors as aforesaid shall certify

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that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon either order him to be discharged, or to be detained in custody, or to be transferred to a public Lunatic Asylum, if he has not been already sent to such an Asylum; and may appoint a commission, consisting of a judicial officer and two medical officers, whereof the chief medical officer attached to the Lunatic Asylum shall be one. The said commission shall make formal inquiry into the state of mind of such person taking such evidence as is necessary, and shall report to the Local Government, who may order his discharge or detention as to it may seem fit.

129 (434). *Delivery of lunatic to care of relative.*—Whenever any relative or friend of any person detained under the provisions of Section 125 is desirous that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person detained shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may order that the person detained be delivered to such relative or friend. Whenever such person is so delivered it shall be upon condition that he shall be subject to be inspected by such officer, and at such times as the Local Government directs. The provisions of Sections 126 and 128 shall apply to persons detained under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be dealt with as a certificate of the Inspector General of Prisons or the Visitors of Lunatic Asylums, under the said sections.

130 (186). *Procedure where accused does not understand the proceedings.*—If an accused person, though not insane, cannot be made to understand the proceedings, the Court may proceed with the trial; and if such trial results in a conviction, the Court shall pass thereon such order as it thinks fit.

### XIII.—Of Prosecutions in certain Cases.

131 (465). *Prosecutions for offences against the State.*—A complaint of an offence punishable under Chapter VI. of the Indian Penal Code, except Section 127, or punishable under Section 294A of the said Code, shall not be entertained, unless the prosecution be instituted by order of, or under authority from, the Governor General in Council or the Local Government, or some officer empowered by the Governor General in Council to order or authorize such prosecution, or unless instituted by the Advocate General.

132 (466). *Prosecution of Judges and public servants.*—A complaint of an offence of which any Judge or any public servant not removeable from his office without the sanction of the Government is accused as such Judge or public servant, shall not be entertained against him, except with the sanction or under the direction of the Government, or of some officer empowered by the Government, or of some Court or other authority to which he is subordinate, and whose power so to sanction or direct such prosecution the Government does not think fit to limit or reserve. No such Judge or public servant shall be prosecuted for any act purporting to be done by him in the discharge of his duty, unless with the sanction of the Government. The sanction must be given before the commencement of the proceedings. In this section the expression "Government" means either the Local Government or the Governor General in Council; and the expressions "Judge" and "public servant" have the meanings assigned to them respectively by the Indian Penal Code.

133 (467). *Prosecution for contempts of the lawful authority of public servants.*—A complaint of any offence described in Chapter X. of the Indian Penal Code, not falling within Section 175, 178, 179, or 180 of that Code, shall not be entertained by any High Court, except with the sanction or on the complaint of the public servant concerned, or of his official superior.

134 (470). *Nature of sanction necessary.*—The sanction referred to in Section

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133 may be expressed in general terms, and need not name the accused person, and may be given at any time. *Explanation.*—In cases under this chapter, the report or application of the public servant shall be deemed sufficient complaint.

135 (471). *Procedure in cases mentioned in Section 133.*—When the Court is of opinion that there is sufficient ground for inquiring into any charge mentioned in Section 133, it may, after making such preliminary inquiry as may be necessary, either commit the case itself, or may send the case for inquiry to any Magistrate having power to try or commit for trial the accused person for the offence charged. Such Magistrate shall thereupon proceed according to law; and the Court may send the accused person in custody, or take sufficient bail for his appearance before such Magistrate; and may bind over any person to appear and give evidence on such trial or inquiry. The Magistrate receiving the case may, if he is authorized to make transfers of cases, transfer the inquiry to some other competent Magistrate, instead of completing the inquiry himself.

### XIV.—Of Bail.

136 (390). *Power to direct admission to bail.*—The Court may in any case direct that an accused person shall be admitted to bail, or that the bail required by a Magistrate be reduced.

137 (396). *Procedure to compel payment of penalty by accused.*—Whenever, by reason of default of appearance of the person executing the personal recognizance, the Court is of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance, it shall proceed to enforce the penalty, by issuing a warrant for the attachment and sale of the moveable property belonging to such person, which may be found within its jurisdiction. Such warrant may be executed within such limits, and it shall authorize the distress and sale of any moveable property belonging to the accused person without such limits, when endorsed by the Magistrate of the District in which such property is situate.

138 (397). *Procedure to compel payment of penalty by sureties.*—Whenever, by reason of default of appearance by the person bailed, the Court is of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance of the surety or sureties, it shall give notice to the surety or sureties to pay the same, or to show cause why it should not be paid. If such penalty be not paid, and if no sufficient cause for its non-payment be shown, the Court shall proceed to recover the penalty from such surety or sureties, by issuing a warrant for the attachment and sale of any moveable property belonging to him or them which may be found within its jurisdiction. Such warrant may be executed within such local limits; and it shall authorize the distress and sale of any moveable property belonging to the surety or sureties without such limits, when endorsed by the Magistrate of the District in which such property is situate. If such penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the Court, in the civil jail, during a period not exceeding six months: Provided that the Court may, at its discretion, remit any portion of the penalty mentioned in the recognizance of the party or witness, or of the surety or sureties, and enforce payment in part only: The Court may direct any Magistrate to levy the amount due on a forfeited bail-bond, executed in respect of attendance before such Court.

139 (398). *Deposit instead of bail.*—When any person is required to give bail, the Court may permit him to deposit a sum of money or Government promissory notes to such amount as it may fix in lieu of such bail.

### XV.—Of Security for keeping the Peace.

140 (489). *Personal recognizance to keep the peace in cases of conviction.*—Whenever a person accused of rioting, assault, or other breach of the peace, or

with abetting the same, or with assembling armed men or taking other unlawful measures with the evident intention of committing the same, is convicted of such offence, and the Court is of opinion that it is just and necessary to require such person to give a personal recognizance for keeping the peace, the Court may, in addition to any other order passed in the case, direct that the person so convicted be required to execute a formal engagement, in a sum proportionate to his condition in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding three years, with a provision that, if the same be not given, he shall be kept in simple imprisonment for any time not exceeding three years, unless within such period he executes such formal engagement as aforesaid. If the accused person be sentenced to imprisonment, the period for which he may be required to execute a recognizance, and the imprisonment in default of executing such recognizance, shall commence on the expiration of his sentence.

141 (490). *Security to keep the peace.*—Whenever it appears necessary to require security for keeping the peace, in addition to the personal recognizance of the party so convicted, the Court empowered to require a personal recognizance may require security in addition thereto, and may fix the amount of the security-bond to be executed by the surety or sureties; with a provision that, if the same be not given, the party required to find the security shall be kept in simple imprisonment for any time not exceeding three years.

142 (534). *Power to restore possession of immoveable property.*—Whenever a person is convicted of an offence attended with criminal force, and it appears to the Court that, by such criminal force, any person has been dispossessed of any immoveable property, the Court may cause such person to be restored to possession. No order made for this purpose shall prejudice any right over such immoveable property which any person may be able to show in a civil suit.

#### XVI.—Miscellaneous.

143. *Saving of Acts xv. of 1869 and v. of 1871.*—Nothing herein contained shall be deemed to affect the Prisoners' Testimony Act, 1869, or the Prisoners Act, 1871.

144. *Advocate General may exhibit informations.*—The Advocate General may, with the previous sanction of the Governor General in Council or the Local Government, exhibit to the local High Court, against persons subject to the jurisdiction of the said Court, informations for all purposes for which Her Majesty's Attorney General may exhibit informations on behalf of the Crown in the Court of Queen's Bench or Exchequer. Such proceedings may be taken upon every such information as may lawfully be taken in case of similar informations filed by Her Majesty's Attorney General in England, so far as the circumstances of the case and the course and practice of proceeding in the said High Courts respectively will admit. All fines, penalties, forfeitures, debts, and sums of money recovered or levied under or by virtue of any such information shall belong to the Government of India.

145. *Effect of charge preferred by Advocate General.*—Upon charges preferred by the Advocate General or by any Magistrate or other officer specially empowered by the Government in this behalf, persons committed to custody or held to bail shall be deemed to have been brought before the High Court in due course of law, and (subject to the provisions herein contained as to the amendment and alteration of charges, and subject also to the provisions of Sect. 24) shall be tried upon the charges so recorded.

146. *Power to enter nolle prosequi.*—At any stage of any proceeding under this Act, before the return of the verdict, the Advocate General may, if he think fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the information or charge; and thereupon all proceedings on such information or charge against the defendant shall be stayed, and he

## HIGH COURTS' CRIMINAL PROCEDURE.

shall be discharged of and from the same. But such discharge shall not amount to an acquittal.

147. *Power of Presidency High Court to transfer to itself cases from Police Magistrates.*—Whenever it appears to the High Court of Judicature at Fort William, Madras or Bombay, that the direction hereinafter mentioned will promote the ends of justice, it may direct the transfer to itself of any particular case from any criminal Court situate within the local limits of its ordinary original criminal jurisdiction, and the High Court shall have power to determine the case so transferred, and to quash or affirm any conviction or other proceeding which may have been had therein, but so that the same be not quashed for want of form, but on the merits only.

148. *Power to issue directions of the nature of a habeas corpus.*—Any of the High Courts of Judicature at Fort William, Madras and Bombay may, whenever it thinks fit, direct—(a) That a prisoner, legally committed and within the local limits of its ordinary original criminal jurisdiction, be brought up before it to be bailed: (b) That a person within such limits be brought up before the Court to be dealt with according to law: (c) That a person illegally or improperly detained in public or private custody within such limits be set at liberty: (d) That a prisoner detained in any gaol situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court: (e) That a prisoner detained as aforesaid be brought before a court-martial or any Commissioners acting under the authority of any commission from the Governor General in Council, for trial, or to be examined touching any matter depending before such court-martial or Commissioners respectively: (f) That a prisoner within such limits be removed from one custody to another for the purpose of trial: (g) That the body of a defendant within such limits may be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment; and neither the High Court nor any Judge thereof shall hereafter issue any writ of *habeas corpus* for any of the above purposes. Each of the said High Courts shall, as soon as conveniently may be, frame rules to regulate the procedure in cases under this section; and till such rules are framed, the practice of such Courts as to the obtaining, granting, and serving of writs of *habeas corpus*, and as to the returns thereto, shall apply in such cases. Nothing in this section applies to persons detained under Bengal Regulation III. of 1818, Madras Regulation II. of 1819, or Bombay Regulation XXV. of 1827, or the Acts of the Governor General in Council No. XXXIV. of 1850 or No. III. of 1858.

149. *Courts and persons before whom affidavits may be sworn.*—Affidavits and affirmations to be used before any High Court or any officer of such Court, may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge or Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in Chancery in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

150. *Criminal Courts to be open.*—Every High Court in the exercise of its original criminal jurisdiction shall be deemed an open and public Court, to which the public generally may have access, so far as the same can conveniently contain them: But the presiding Judge may, if he thinks fit, order that, during the trial of any particular case, no person shall have access to, or be, or remain in, the room or building used by the Court, without the consent or permission of the Court.

151. *Compounding offences.*—In the case of offences which may lawfully be compounded, injured persons may compound the offence out of Court, or in Court with the permission of the Court. Such withdrawal from the prosecution shall have the effect of an acquittal of the accused person.

152. *Judges of High Courts to be Justices of the Peace* *virtute officii.*—Every

## HIGH COURTS' CRIMINAL PROCEDURE.

Judge of a High Court shall, by virtue of his office, be a Justice of the Peace within and for the whole of British India.

153. *Pending cases.*—Cases pending, when this Act comes into force, in any High Court in the exercise of its original criminal jurisdiction shall be decided, as far as may be, according to the procedure provided in this Act.

### THE SCHEDULE.

(See section 2.)

#### ACTS.

Number and year.	Subject or Title.	Extent of repeal.
XXXI. of 1838 . .	Supreme Courts, Criminal Law	So much as has not been repealed.
XXII. of 1839 . .	An Act for enabling persons charged with offences to make their defence more effectually.	So much as has not been repealed.
IV. of 1849 . . .	Criminal lunatics	So much as has not been repealed.
XVI. of 1852 . .	An Act for further improving the administration of Criminal Justice in Her Majesty's Courts of Justice in the territories of the East India Company.	So much as has not been repealed.
XVIII. of 1859 . .	An Act to amend the law relating to offences declared to be punishable on conviction before a Magistrate.	So much as has not been repealed.
XVIII. of 1862 . .	An Act to repeal Act XVI. of 1852 in those parts of British India in which the Indian Penal Code is in force, and to re-enact some of the provisions thereof with amendments, and further to improve the administration of Criminal Justice in Her Majesty's Supreme Courts of Judicature.	Sections 1 to 25 (both inclusive): Sections 36 to 46 (both inclusive): and Sections 54, 55, and 56.
XIII. of 1865 . .	An Act to amend the procedure of Her Majesty's High Courts of Judicature in the exercise of their original jurisdiction, and to provide for the exercise of such jurisdiction at places other than the Presidency Towns.	So much as has not been repealed.
IV. of 1866 . . .	An Act to amend the constitution of the Chief Court of Judicature in the Panjáb and its Dependencies.	Sections 21 to 41 (both inclusive), and Section 20, except the first twenty-two words.
XVI. of 1866 . .	An Act to relieve the Governor General of India in Council from the duty of signing the commissions mentioned in Sections 22 and 44 of the High Courts' Criminal Procedure Amendment Act, 1865.	The whole.

## TELEGRAPHS IN INDIA.

Number and year.	Subject or title.	Extent of repeal.
XXIV. of 1866 . .	An Act to amend the procedure of the High Court of Judicature for the North-Western Provinces of the Presidency of Fort William.	Sections 2 to 17 (both inclusive).
XIII. of 1869 . .	An Act further to amend the procedure of the High Court of Judicature for the North-Western Provinces.	Sections 1 and 2, and so much of Sections 3 and 4 as relates to criminal jurisdiction.
XXII. of 1870 . .	An Act to confirm certain laws affecting European British subjects.	Section 3.

### STATUTES.

Number and year.	Title or abbreviated title.	Extent of repeal.
13 Geo. III. c. 63. .	An Act for establishing certain Regulations for the better management of the affairs of the East India Company, as well in India as in Europe.	Section 34. In Section 33, the words "and the Chief Justice and other Judges of the said Supreme Court of Judicature."
33 Geo. III. c. 52 .	<i>An Act whose title begins with the words An Act for continuing, and ends with the words and Bombay.</i>	Sections 153 and 154.
53 Geo. III. c. 155 .	<i>An Act whose title begins with the words An Act for continuing, and ends with the words Company's Charter.</i>	Sections 100, 102, 103.
9 Geo. IV. c. 74 . .	An Act for improving the administration of Criminal Justice in the East Indies.	The whole Act, except Sections 1, 7, 8, 9, 25, 26, and 56.

### ACT No. I. OF 1876.

#### *AN ACT to amend the law relating to Telegraphs in India.*

*Preamble.*—Whereas it is expedient to amend the law relating to Telegraphs in India; It is hereby enacted as follows :—

#### I.—*Preliminary.*

1. *Short title ; Local extent ; Commencement.*—This Act may be called "The Indian Telegraph Act, 1876 :—" It extends to the whole of British India, and so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty ; and it shall come into force at once.



## TELEGRAPHS IN INDIA.

2. *Repeal of Acts ; Saving of existing licenses and rules.*—Act No. xxxiv. of 1854 (*for regulating the establishment and management of Electric Telegraphs in India*) and Act No. viii. of 1860 (*for regulating the establishment and management of Electric Telegraphs in India*) are hereby repealed : but all licenses granted, declarations made, and rules framed under either of the said Acts and now in force, shall be deemed to have been respectively granted, made, and framed under this Act.

3. *Interpretation-clause ; “Telegraph” ; “Telegraph Officer” ; “Message”*—In this Act—“Telegraph” means an electric or magnetic Telegraph : “Telegraph Officer” means any person employed either permanently or temporarily in connection with a telegraph established or maintained and worked by the Government, or by a company or person licensed under this Act ; and “Message” means any communication sent by telegraph, or given to a telegraph officer to be sent by telegraph or to be delivered.

### II.—Privileges and Powers of Government.

4. *Exclusive privilege of establishing telegraphs. Proviso as to licenses.*—Within British India, the Governor General in Council shall have the exclusive privilege of establishing lines of telegraph : Provided that the Governor General in Council may grant a license to any person or Company to establish or to maintain a line of telegraph within any part of British India, which license shall be revocable on the breach of any of the conditions therein contained.

5. *Power to take possession of telegraphs established by license.*—On the occurrence of any public emergency, or in the interest of the public safety, the Governor General in Council or the Local Government may take temporary possession of any line of telegraph established or maintained by any Company or person licensed under this Act, or may order that any message to or from any person or relating to any specified subject shall be intercepted or communicated to the Government or any officer thereof mentioned in such order. If any doubt arises as to the existence of a public emergency or whether any act done under this section was in the interest of the public safety, a certificate signed by a Secretary to the Government of India or to the Local Government shall be conclusive evidence on the point.

6. *Power to establish telegraphs on land of railway company.*—Any railway company, on being required so to do by the Governor General in Council, shall permit the Government to establish upon the land of such company, whether within or without the railway fence as the Governor General in Council may in each case determine, a line of telegraph, and shall give every reasonable facility for establishing, maintaining, and using the same.

7. *Power to frame rules for the conduct of Government telegraphs.*—The Governor General in Council may, from time to time, frame rules consistent with this Act for the conduct of telegraphs heretofore or hereafter established by Government, and may therein prescribe the regulations, conditions, and restrictions according to which all messages and signals shall be transmitted by such telegraphs.

8. *Power to frame rules for telegraphs established by license, and to declare Act applicable to telegraphs established within British India by Foreign Powers.*—The Governor General in Council may from time, by notification in the *Gazette of India*, (a) prescribe rules for the conduct of any telegraph established or maintained by any Company or person licensed under this Act ; (b) declare what portions of this Act shall be applicable to such telegraph and to persons using the same, or employed in connection therewith ; (c) declare that this Act, or such portions thereof as may be specified in the notification, shall be applicable to any telegraph established or to be established within British India by any Foreign Prince or State with the consent of the Government of India, and to persons using such telegraph or employed in connection therewith ; All rules prescribed under this section shall have the force of law.

## TELEGRAPHS IN INDIA.

9. *Government not responsible for loss or damage.*—The Government of India shall not be responsible for any loss or damage which may occur in consequence of any telegraph officer failing to transmit with accuracy or to deliver any message given to him for transmission or delivery; and no such officer shall be responsible for any such loss or damage, unless he causes the same negligently, maliciously, or fraudulently.

### III.—Penalties.

10. *Penalty for establishing or maintaining unlicensed telegraphs.*—Whoever, otherwise than under a license duly granted as aforesaid, establishes, or after revocation of such license maintains, a line of telegraph within British India, shall be liable to a fine not exceeding one thousand rupees, and for every week during which such line shall be maintained, shall be liable to a further fine not exceeding five hundred rupees.

11. *For using or working such telegraphs.*—Whoever, knowing, or having reason to believe that a telegraph has been established or is maintained in contravention of this Act, uses such telegraph for the purpose of sending or receiving messages, or performs any service incidental thereto, shall for every such offence be liable to a fine not exceeding fifty rupees.

12. *For opposing establishment, &c., of telegraphs on railway land.*—Every railway company and every officer of a railway company, neglecting or refusing to comply with the provisions of Section 6, shall be liable to a fine not exceeding one thousand rupees for every day during which such neglect or refusal continues.

13. *For intruding into signal-room, &c.*—Whoever, without permission of some competent authority, enters the signal-room of a telegraph office of the Government or of a company or person licensed under this Act, and whoever enters a fenced enclosure round such a telegraph office in contravention of any rule or notice not to do so, and whoever refuses to quit such room or enclosure on being requested to do so by any officer or servant employed therein, and whoever wilfully obstructs or impedes any such officer or servant in the performance of his duty, shall be liable to a fine not exceeding five hundred rupees.

14. *For unlawfully learning the contents of messages.*—Whoever does any of the acts mentioned in Section 13 with the intention of unlawfully learning the contents of any message, or for any other unlawful purpose, shall (in addition to the fine to which he is liable under Section 13) be liable to imprisonment for a term which may extend to a year.

15. *For damaging, &c., telegraphs with intent to prevent transmission, to tap, to commit mischief.*—Whoever, intending—(a) to prevent or obstruct the transmission, conveyance or delivery of any message, (b) to intercept or to acquaint himself with the contents of any message, or (c) to commit mischief, damages, removes, tampers with, or touches any battery, machinery, wire, cable, post or other thing whatever, being part of or used in or about any telegraph or in the working thereof, shall be liable to imprisonment for a term which may extend to three years, or to fine, or to both.

*Such offences to be cognizable and non-bailable.*—All offences under this section shall be cognizable and non-bailable within the meaning of the Code of Criminal Procedure.

16. *Power to employ additional police in places where mischief to telegraphs is repeatedly committed.*—Whenever it appears to the Director General of Telegraphs that any act causing or likely to cause wrongful damage to any telegraph is repeatedly or maliciously committed in any place, and that the employment of an additional police force in such place is thereby rendered necessary, the Local Government may, on the application of the said Director General, send such additional force to such place, and employ the same therein so long as such necessity continues; and the inhabitants of such place shall be

charged with the cost of such additional police force ; and the Local Government may by order in each case define the limits of any place for the purposes of this section ; and the Magistrate of the District, after inquiry if necessary, shall, subject to the orders of the Local Government, assess the proportion in which such cost is to be paid by the said inhabitants according to his judgment of their respective means.

All monies payable under this section shall be recoverable either under the warrant of a Magistrate by distress and sale of the goods of the defaulter within the local limits of such Magistrate's jurisdiction, or by suit in any competent Court, and shall be applied to the maintenance of the police force, or otherwise as the Governor General in Council may from time to time direct.

17. *Penalty for omitting to transmit or deliver messages ; for intercepting or divulging messages ; for divulging purport of signals.*—Any telegraph officer who wilfully secretes, makes away with, alters or omits to transmit any message which he may have received for transmission or delivery, or wilfully, or otherwise than by the official order of a Secretary to the Government of India or to the Local Government, or of such other officer as the Governor General in Council authorizes to give such order, intercepts any message or any part thereof, or divulges any message, or the purport of any message or of any part thereof, to any person not entitled to receive the same, or divulges the purport of any telegraphic signal to any person not entitled to become acquainted with the same, shall be liable to imprisonment for a term not exceeding three years, or to fine, or to both.

18. *For offering bribes to telegraph officers.*—Every telegraph officer shall be deemed a public servant within the meaning of Sections 161, 162, 163, 164 and 165 of the Indian Penal Code. And in the definition of " legal remuneration contained in the said Section 161, the word " Government " shall, for the purposes of this Act, be deemed to include a person or company licensed under this Act.

19. *For misconduct.*—Any telegraph officer guilty of any act of drunkenness, carelessness, or other misconduct, whereby the transmission or delivery of any message is endangered, or who loiters or makes delay in the transmission or delivery of any message, shall be liable to imprisonment for a term not exceeding three months, or to a fine not exceeding one hundred rupees, or to both.

20. *For sending messages without payment to Government.*—Any telegraph officer who transmits by telegraph any message upon which the prescribed charge has not been paid, intending thereby to defraud the Government, shall be liable to imprisonment for a term which may extend to three years, or to fine, or to both.

21. *For sending fabricated message.*—Whoever transmits or causes to be transmitted by a telegraph a message which he knows to be false or fabricated, shall be liable to imprisonment for a term which may extend to three years, or to fine, or to both.

22. *For retaining messages, &c., delivered by mistake.*—Whoever fraudulently retains, or wilfully secretes, or makes away with, or keeps, or detains a message which ought to have been delivered to some other person, or being required by a telegraph officer to deliver up any such message, neglects or refuses to do so, shall be liable to imprisonment for a term which may extend to two years, or to fine, or to both.

23. *For abetment of, and attempts to commit offences.*—Whoever abets within the meaning of the Indian Penal Code, any offence under this Act, and whoever attempts to commit any such offence, shall be punishable with the punishment herein provided for such offence.

## SUPPLEMENTARY NOTES.

### INDIAN PENAL CODE.

#### SECT. 21, CLAUSE 9, p. 24.

An *Izaphatdar*—i.e., a lessee of a village who has undertaken to keep an account of its forest revenues, and pay a certain proportion to the Government, keeping the remainder for himself, is not an officer, and therefore not a public servant, within the meaning of Section 21.

The word "officer" in clause 9 means a person employed to exercise to some extent a delegated function of Government. He must be either himself armed with some authority or representative character, or his duties must be immediately auxiliary to those of some one who is so armed.—*Reg. v. Ramajirav Jivbajirav*, 12 Bomb. H.C.R. 1.

#### SECT. 214, p. 190.

Illustration (b) is misleading. It contemplates an assault as an act simply, irrespective of the intention; while, by Section 351, an assault, as defined under the Code, consists of an act coupled with an intention. On this see the remarks of C. J. Westropp in *R. v. Rahimat*, 1 I.L.R. Bom. 147-156.

### CRIMINAL PROCEDURE CODE.

#### SECT. 64, p. 500.

An application for the transfer of a case under this section should be made, not by letter to the English Department of the High Court, but before the Court in its judicial capacity, and should be supported by affidavits or affirmation in the usual way.—*R. v. Zuhiruddin*, 1 I.L.R. Cal. 219.

#### SECT. 188, p. 564.

In the case of *R. v. Rahimat*, 1 I.L.R. Bom. 147 (over-ruling *R. v. Jetha Bhala*, 10 Bom. H.C.R. 68), it was held by the full bench that, whenever the words "voluntarily," "intentionally," "fraudulently," "dishonestly," or others, whose definition involves a particular intention, enter along with a specified act into the description of an offence, the offence not being one irrespective of the intention, is not one which the exception to Section 214 of the Indian Penal Code by itself allows to be compounded. The offence, to admit of compromise, must be one in this sense irrespective of the intention, and it must be one for which a civil action may be brought at the option of the person injured, instead of criminal proceedings. So, the offence of voluntarily causing grievous hurt cannot be compounded.

## SUPPLEMENTARY NOTES.

SECT. 210, p. 577.

See *R. v. Rahimat*, 1 I.L.R. Bom. 147, and note on the case to Section 188.

SECT. 215, p. 579.

In the case of *Sidya bin Satya*, decided by the Bombay High Court in 1873 (referred to in the note to this section of Prinsep's Criminal Procedure Code), it was held that a Magistrate of the District, on finding a magistrate subordinate to him has improperly discharged an accused person under this section, should not refer the proceedings to the High Court, but should take up the case under Section 142. But in the matter of the petition of *Moheah Mistree* (I.L.R. Calc. 282) *Macpherson, J.* (after referring to the fact that the case of *Sidya bin Satya* was not reported in the regular reports of the Bombay High Court, and that the facts were not known) held that such a case of improper discharge came before the District Magistrate under Section 295, and that his proper and only course was to report it for order to the High Court, which might direct a retrial under Section 297.

SECT. 272, p. 614.

On an appeal under this section the High Court has power to order the accused to be arrested pending the appeal.—*R. v. Gobin Tewari*, 1 I.L.R. Calc. 281; *Bane v. Methuen*, 2 Bing. 63.

SECT. 280, p. 618.

It has been ruled in *Madras* (1 I.L.R. Mad. 54), that this section authorizes the enhancement of a sentence by punishment differing in kind from that awarded by the Court whose sentence is appealed from.

SECT. 297, p. 631.

Where, in a case of conviction for housebreaking by night, in order to commit theft, under Section 457 and therefore under Section 380 of the Penal Code, one sentence, not exceeding that which might have been given for the graver offence, was passed, it was held as not amounting to a material error that separate sentences had not been passed. *R. v. Lukaya bin Tamana*, 1 I.L.R. Bom. 214.

SECT. 297, p. 631.

It has been held by *Turner and Spankie, J.J.*, that, though a judgment of acquittal does not preclude the High Court from the exercise of its powers of revision under this section, yet such powers can only be exercised where judgment of acquittal has proceeded on an error of law and not where it has proceeded on an error of fact.—*In re Hardeo*, 1 I.L.R. All. 139.

SECT. 314, p. 643.

The aggregate of the sentences passed under this section must be considered a single sentence for the purpose of confirmation or appeal. So where an assistant Session Judge sentenced the accused to three years' rigorous imprisonment for each of three offences—i.e., to an aggregate imprisonment of nine years, it was held that the sentence required confirmation under Section 18 by the Session Judge.—*R. v. Rama Bhivgowda*, 1 I.L.R. Bom. 223; *R. v. Gulam Abbas*, 12 Bom. H.C.R. 147.

SECT. 390, p. 681.

See *R. v. Thakur Parshad*, 1 I.L.R. All. 151.

SECT. 473, p. 729.

In the case of *Reg. v. Kulteran Singh*, 1 I.L.R. All. 129, it was held that an offence against public justice is not an offence in contempt of Court under this section; but it was also held that, in the face of Section 471, no Court, civil or criminal, which is of opinion that there is sufficient ground for inquiring into a charge mentioned in Sections 467, 468, or 469, can, except as provided in Section 472, try the accused itself. The first part of this ruling is in conflict with the case of *R. v. Navranbeg Dulabeg* (10 Bom. H.C.R. 73), but the effect of both cases is the same; and there is no material difference between this ruling and that of the Madras High Court, reported in 7 Mad. H.C.R. 17. But in the case of *R. v. Jagat Mal*, 1 I.L.R. All. 162, it was held not only, as in the above case of *Kulteran Singh*, that an offence against public justice is not an offence in contempt of Court within the meaning of Section 473, but that any Court, civil or criminal, which is of opinion there is sufficient ground for inquiring into a charge mentioned in Sections 467, 468, and 469, is not precluded by the provisions of Section 471 from trying the accused person itself for the offence charged. (Followed in *R. v. Gur Baksh*, 1 I.L.R. All. 193.) This is in conflict with all of the above cases. It is difficult to determine what the Legislature intended to be understood by the inapt words "in contempt of its own authority;" but the best interpretation is probably that of the High Court of Madras in its ruling above referred to. It is there stated that it is true that the words are "in contempt of its own authority," and that they would narrow the prohibition to cases falling within Chap. X. of the Penal Code; but Section 435 embraces also Section 228 of the Penal Code, which is in Chap. XI. (Offences against public justice). Further, Section 472 is treated as a limitation of the prohibition of a Court trying "offences committed in contempt of its own authority." Now the Court of Session has not exclusive jurisdiction over any offence in Chap. X. of the Penal Code. It seems clear, therefore, that, although by most inapt words, the Legislature intended to extend the prohibition, save in the excepted cases, to all offences mentioned in Sections 467, 468, and 469. The result is that, save in these cases, a Court cannot try any offence described in Sections 467, 468, and 469, when committed before itself.

SECT. 122 and 346, p. 525, 659.

The case of *R. v. Bai Ratan* (10 Bom. H.C.R. 166), was followed in the case of *R. v. Shivya*, 1 J.L.R. Bom. 219.

## HIGH COURTS' CRIMINAL PROCEDURE ACT.

SECT. 147, p. 975.

It has been held that the High Court has no power under this section to order a fine to be refunded on quashing a conviction.—The Queen on the prosecution of *Morad Ali v. Hadji Jeebun Bux*, 1 I.L.R. Calc. (See *contra—in re Louis*, 15 B.L.R. Ap. 14.)



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